

June 24, 2008



**TRANSCRIPT
June 24, 2008**

MONTGOMERY COUNTY COUNCIL

PRESENT

Councilmember Michael Knapp, President
Councilmember Roger Berliner
Councilmember Valerie Ervin
Councilmember George Leventhal

Councilmember Phil Andrews, Vice President
Councilmember Marc Elrich
Councilmember Nancy Floreen
Councilmember Duchy Trachtenberg



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1 President Knapp,

2 Okay. Good morning, I think we having a -- we have a quorum. Thank you. We're
3 running a little bit late. And we had an applicant for the Montgomery County Planning
4 Board interview that we had to conduct. So I thank you all for bearing with us. We will
5 begin the morning with invocation. We have Dr. Rosetta Robinson from Interfaith Works
6 of Rockville. There she is; please come join us. I would ask everyone to please rise.

7
8 Dr. Rosetta Robinson,

9 Years ago, the late Herbert H. Humphrey, who was Vice President, said these words.
10 The moral test of government is how it treats those who are in the dawn of life, the
11 children; those who are in the twilight of life, the aged; and those who are in the
12 shadows of life, the sick, the needy and the handicapped. Shall we pray? Great God we
13 are mindful of the responsibility given to government to be a place of justice and support
14 for the needy. From the prophets and the text of the Hebrew Bible and Islamic traditions
15 and other religious traditions, as well as the parables of Jesus, we hear the call to show
16 concern for the poor. May we in government and in community live out that call this day
17 and every day. Amen. .

18
19 President Knapp,

20 Thank you very much. We have a series of presentations, this morning. The first is a
21 proclamation in recognition of the winners of the Montgomery County History Day
22 competition, by Council Vice President Andrews.

23
24 Vice President Andrews,

25 I'd like to have all the winners of the competition please join me up here, as well as
26 Emily Correll who is the School Program Coordinator from Montgomery County
27 Historical Society, and also Deborah Rankin, who is the new Executive Director. Hello,
28 how are you guys doing? Come on up guys. We can all fit up here. The hardest part will
29 be getting in the picture at the same time at the end. All right, well, it will surprise no one
30 that we have a lot of bright and industrious students -- you can make a circle here; that's
31 good -- in Montgomery County. And in addition to that, we have a lot of students who
32 are interested in history and who are encouraged to study history by their teachers, by
33 their parents, by the Montgomery County Historical Society, which has done great work
34 in sponsoring this competition for, I think, eight years now -- eight or nine. Well, it's still
35 somewhat recent history, but eight or nine years is a good start. And I have had the
36 privilege of attending a number of the Montgomery County History Days that have been
37 held at Julius West Middle School the last several years, and seeing the work done by
38 the which is excellent and helping to award some of the certificates. And I want
39 recognize the students who are here today and present a proclamation to the Historical
40 Society, and then a certificate to the students who could join us today for this morning.
41 So the proclamation says, Whereas, the Montgomery County History Day Competition
42 challenges middle and high school students to broaden their interest in history; and
43 Whereas, the Eighth Annual History Day competition demonstrated how this event has
44 continued to grow, this year attracting about 3,000 students from 25 schools, and once



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1 again helped participants develop a high quality of research and writing skills that you
2 will use in your other subjects and your future years in the system, and the rest of your
3 life; Whereas, the History Day competition engages students to produce exhibits,
4 documentaries, plays or research papers using multiple resources; and Whereas, the
5 History Day competition requires students to present their research findings and
6 conclusions in a structured format; and Whereas, Montgomery County History Day is
7 part of National History Day and is sponsored by the Montgomery County Historical
8 Society with assistance from the Maryland Humanities Council National History Day,
9 Montgomery County Public Schools, Columbia Gas of Maryland, the Maryland State
10 Department of Education, and the Arts and Humanities Council of Montgomery County;
11 now therefore be it resolved that the County Council of Montgomery County, Maryland,
12 hereby congratulates the winners of the 2008 Montgomery County History Day
13 competition, and commends your dedication and commitment as your love of history is
14 an inspiration and a source of encouragement to all young people in Montgomery
15 County. Presented this day, the 24th of June, 2008, signed by Council President Michael
16 Knapp. My congratulations to all of you. Thank you to the Society for sponsoring this
17 important competition. I want to recognize as well that Mary Kay Harper, who is the
18 predecessor for Deborah Rankin, who is the current Executive Director, served for
19 many years as the very dedicated Director of the Society and really made a huge
20 contribution. She couldn't be with us today, but I wanted to recognize the great work she
21 has done and the groundwork she laid for Deborah and her work with Emily and others.
22 So, I will thank Mary Kay, wherever you are, for your great work. And now I want to
23 present a certificate to the winners who could be with us today. Ricardo Ortega-Afay,
24 congratulations. Rebecca Gale, congratulations. Eric Keen, congratulations, Eric.
25 Michael Keen, congratulations. Peter Adler Asch; Peter, congratulations. I remember
26 you from [inaudible]. Matt Becker, congratulations. Carolyn Becker, congratulations. Eva
27 Branson, congratulations. Maggie Gilligan, congratulations. Aaron Kidone,
28 congratulations. Levi Poe, congratulations. Stephanie Posthuma, congratulations. And
29 William Chafin, congratulations. Let me ask Emily or Deborah if they'd like to say a few
30 words about the competition and what you do.

31
32 Emily Correll,

33 I would like to congratulate these students again, and thank them and their parents, who
34 definitely helped them participate. Their teachers, because school is out, are not here
35 but -- most of them, and I'd like to let you know that it's a required part of the
36 Montgomery County curriculum, so any teachers who did this, did this because they
37 thought it was an important program for their students. And some of the students did
38 this on their own. This is a lot of work, but they thought it was important. And the
39 knowledge of history is important to have good citizenship, and good citizens make
40 good government. So thank you very much for recognizing them.

41
42 Vice President Andrews,

43 Thank you, Emily. All right now, here's for the toughest part. A group picture and
44 everyone in the same picture, okay.



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President Knapp,

Thank you, Council Vice President Andrews, and congratulations to all our winners. Our next presentation this morning is a proclamation in recognition of Gwen McWhorter, recipient of the Agnes Meyer Teacher of the Year award, by Councilmember Ervin.

Councilmember Ervin,

Good afternoon -- good morning. It is morning still. Good morning, everyone. In Africa, the Mesi Warriors, when they are greeting one another on the road, they greet each other with how are the children. And I can say for myself and for most parents in Montgomery County, our children are doing quite well. Miss McWhorter is one of the many reasons why we are so proud of all of our teachers and of our school system in Montgomery County, which ranks as one of the best school systems in the entire country. So, Miss McWhorter has been honored for her contributions as a teacher at A. Mario Loiederman Middle School. And I want to tell you just a little bit about her before I present her proclamation. Miss McWhorter greets each of her sixth-grade math students by name; all 650 of them. She is the self-appointed mother hen of the sixth grade at Loiederman Middle School. She is really persistent with her kids. She initiates tutoring sessions with kids who probably wouldn't otherwise ask for help. Most of Miss McWhorter's sixth-grade math students take algebra in the eighth grade. And the reason why this is most important at Mario Loiederman Middle School is because four out of five of its students at one time qualified for FARMS, an indicator of poverty; and 30% of all the students at Mario Loiederman Middle School are current or former ESOLstudents. For those of you who don't know anything about Mario Loiederman Middle School, it is a whole school magnet that's specialty is the arts. So it's a very, very special middle school and we are proud of it. And we're really proud of you and all that you have done to accomplish what you've accomplished, but most of all because you're a fantastic teacher and your students really adore you. And so we are from the County Council going to honor you with this proclamation which I'll read now. Whereas, each year the Washington Post honors exceptional men and woman in the teaching profession by awarding \$3,000 to an outstanding teacher selected in each of the 19 local school systems, and one award to a teacher from a private school in the metropolitan area; and, Whereas, Gwen McWhorter, a mathematics resource teacher extraordinaire at A. Mario Loiederman Middle School is this year's recipient of the prestigious Agnes Meyer Outstanding Teacher Award from the Washington Post; and, Whereas, Miss McWhorter not only knows math, loves math and lives and breathes math, she believes in the power it holds to advance the academic knowledge of her students; and, Whereas, it has been said that Gwen McWhorter is the epitome of an outstanding teacher leading by example and inspiring other teachers to raise the bar always understanding the individual needs of students all the while encouraging their talents and self-esteem; and, Whereas, Gwen McWhorter uses innovative methods to inspire students all with an eye toward opening up the world of mathematics to others, and has been known to walk on top of desks to teach -- I can't even say it -- statistics; and, whereas, Gwen McWhorter uses impressive efforts exemplify how education



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1 professionals who are committed to academic excellence can open the doors of
2 success for the young people of Montgomery County. Now therefore be it resolved that
3 the County Council of Montgomery County, Maryland, hereby congratulates Gwen
4 McWhorter on her outstanding achievement on receiving the Agnes Meyer Outstanding
5 Teacher Award, and thanks her for her past, present and future work to light the lamp of
6 learning for Montgomery County students. Presented on this 24th day of June, in the
7 year 2008. Signed Michael J. Knapp, Council President. A little while ago Gwen said, if
8 you ask me to speak in front of 45 students, I could speak on and on and on, but we'd
9 like for you to say a few words.

10
11 Gwen McWhorter,

12 It's definitely a different audience with adults here. I'm honored to be -- to have all of this
13 attention, especially this spring for something that I really do enjoy doing and then to
14 have the surprise of one of my former students here today was even funnier. I'm really
15 thrilled with the attention that our school got because of this award, and I'm so flattered
16 by all of the wonderful things that people wrote and what parents and kids wrote. It's just
17 one of those -- it doesn't matter how bad your day is, if you read a letter from a kid just
18 telling you that you made a difference, it makes all those little battles worth it. So thank
19 you so much.

20
21 Councilmember Ervin,

22 Oh, it's our pleasure.

23
24 Gwen McWhorter,

25 I am sure many people and many students in this audience have wonderful teachers; I
26 just happened to be the lucky one this year. Thank you again.

27
28 President Knapp,

29 Our final presentation this morning is a proclamation in recognition of contributions
30 made by Foster Parents, by Councilmember Trachtenberg.

31
32 Councilmember Trachtenberg,

33 It is my pleasure this morning to provide a proclamation to the County Foster Parent
34 Association, again a proclamation signed by both our Council President and County
35 Executive. I would ask the following folks to join me here this morning from the
36 association; Cheryl and Dave Shive, Donna McDonald, Judy Matthews and Rosemary
37 and Tom Popdan. I am assuming that you are in deed foster parents and participants in
38 the wonderful association that we have here in the County. I'd also Heather Felsen and
39 Cathy Lynn, both social workers, to join me as well. And I would note that Agnes
40 Leshner is here from Child Protective Services. The Foster Parent Association that we
41 are blessed to have here in Montgomery County provides important supports for
42 parents -- foster parents who really make a tremendous difference, not just in the lives
43 of children here in the County, but really for the community that we all love. And the
44 greatest gift that one can provide in their lifetime is to really reach into their heart and



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1 make a difference for another human being, and really help a child reach their potential
2 and experience unconditional love and support so that their journey is a really
3 successful one and a happy one. And that's indeed what foster parents do. And I want
4 to acknowledge that this morning. And I also want to acknowledge again the
5 extraordinary contribution that foster parents indeed make to the community here in
6 Montgomery County. I am going to read the proclamation at this time, and ask for some
7 comments possibly by parents who have joined me. Whereas, the Foster Parent
8 Association is a collaborative effort between the department of Health and Human
9 Services and the foster families who provide loving, stable, temporary homes for
10 children of this community; and, whereas, it is important that we take time to recognize
11 and celebrate the accomplishments of the foster parents who contribute shelter, safety
12 and care for children that due to neglect or abuse prevents them from remaining in their
13 homes; and, whereas, the Foster Parent Association sponsors a supportive program for
14 foster parents to share their experiences and knowledge, and implements a training
15 program which prepares families to understand and provide services for our special
16 needs children. Now, therefore do we, Isiah Leggett as County Executive, and Michael
17 J. Knapp as County Council President, hereby recognize the Foster Parent Association
18 in Montgomery County for its dedication to providing loving and stable temporary homes
19 for children in need in our community. And it is signed this 24th day of June in the year
20 2008. And again I want to thank all of you for your extraordinary -- . And I wonder if
21 anyone wants to make a comment before we have some photos taken -- shy. Do we
22 have some children here? I thought we did. And I wonder if we could also -- we don't,
23 okay, they're not here. We do have one, okay. No pictures, that's fine. Did anyone want
24 to make any comment?

25
26 Unidentified,
27 Our community, we're truly blessed. We have resources more than most can even
28 imagine in this world. As foster parents, though, we recognize that some kids fall
29 through the cracks, even in an affluent community such as ours. We are blessed and
30 honored to be able to provide a soft landing for those kids, and may possibly a
31 springboard back into a better life.

32
33 Councilmember Trachtenberg,
34 Okay. Well thank you very much, again. Let's take some photos. And maybe want to
35 scoot in a little. Actually, I am going to let one of the parents just make a brief set of
36 remarks. I just found out she's actually been a foster parent here in the County for 29
37 years.

38
39 Unidentified,
40 Thirty is closer. The only reason I tell you it's 30 is because we have had hundreds of
41 children, and I want you to know that it is not an isolated experience. So if you were
42 brave enough, any of you, who would like to step into the ring or step up to the plate,
43 each day you're given the challenge of who you will serve. And your choices make a
44 difference in the lives of others. And it's been a great privilege to work with my husband,



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1 who passed away May 12, in caring for these hundreds of children, most of whom you
2 never hear from again or even see again. But it does make a difference in their lives in
3 choosing the kind of parent they will become, ultimately. Many that we've had are now
4 in their late 20's, and it's a joy to see that they are parenting in a style that's appropriate
5 and beneficial to the society-at-large. So I encourage all of you to consider who you're
6 making a difference to. And if you would accept the challenge, you won't be alone.
7 There are social workers and people in Montgomery County who care what happens to
8 children.

9
10 Councilmember Trachtenberg,
11 Okay. Thank you very much. Again, thank you very much for joining us this morning.

12
13 President Knapp,
14 Thank you all very much. Councilmember Ervin, using her opening remarks in her
15 presentation, the greeting of how are the children; and I think our three presentations
16 this morning certainly gives some indication as to why the children in this community are
17 doing so well. And I thank everyone for their participation and all of their efforts, be it
18 through the History Day awards to our teachers to our foster parents. We truly have a
19 blessed community because the level of advocacy and participation so many of our
20 community members. We now turn to General Business; Ms. Lauer.

21
22 Linda Lauer,
23 Good morning, we have an addition to the Consent Calendar; extension of effective
24 date of temporary Executive Reg 8-08, that's Advertisement Subject to Property Tax
25 Disclosure Requirements. We did have a change this week on the committees' plan for
26 Thursday. The joint Public Safety/MFP scheduled for 11:30, we've moved that to July
27 14; next Monday the joint PHED/Education Committee meeting is off the agenda. The
28 PHED meeting will begin at 10:00. And then we did get -- receive one petition from
29 residents supporting Suburban Hospital's campus enhancement project. Thank you.

30
31 President Knapp,
32 Thank you. Madam Clerk, do we have minutes to approve?

33
34 Council Clerk Crystal Brockington,
35 Yes, the minutes of May 20th, and June 10th, 2008.

36
37 Councilmember Berliner,
38 So moved.

39
40 President Knapp,
41 Moved by Councilmember Berliner.

42
43 Councilmember Ervin,
44 Second.



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1
2 President Knapp,

3 Seconded by Councilmember Ervin. Is there discussion on the minutes? Seeing none,
4 those in support please indicate by raising your hand. That's unanimous. Thank you
5 very -- among those present. We now have before us the Consent Calendar. Is there a
6 motion?

7
8 Councilmember Trachtenberg,
9 So moved.

10
11 President Knapp,
12 Moved by Councilmember Trachtenberg.

13
14 Councilmember Ervin,
15 Second.

16
17 President Knapp,
18 Seconded by Councilmember Ervin. Any decision on the consent calendar? Council
19 member Berliner.

20
21 Councilmember Berliner,
22 Just to thank OLO for their report with respect to the Office of People's Council, I think
23 that they correctly identified that there is a wide range of views with respect to the
24 mission of that operation, and whether or not we ought to review that mission and
25 determine whether it is still consistent with our desires. So I thank them for their work in
26 this regard. It was a report that I had requested, and I believe they have advanced the
27 conversation, which I think now really should go to the PHED Committee for a more
28 detailed discussion with respect to whether or not the current focus of the office is a
29 focus that this Council believes is the appropriate focus.

30
31 President Knapp,
32 Very good. Thank you very much. I just had two comments. The first is Ms. Lauer
33 indicated that we were postponing the Planning, Housing and Economic Development
34 Education Committee joint meeting on positive youth development that was supposed
35 to occur on Monday. And I know that my colleagues have been supportive of doing this,
36 although I think somewhat reluctantly. Beginning as far back as three years ago, most
37 recently with this new Council, I think Councilmember Elrich as our lead for almost a
38 year ago now started raising issues as it related to our progress in our after-school
39 programs. And this was a discussion that then carried on into the fall, carried into the
40 budget discussion that we had this past spring, in an effort to try and get a sense of how
41 many youth are being served, what's the scope of our programs, how are we measuring
42 success. And we had a joint committee meeting scheduled for next week that was to
43 ideally get some issues on the table for us to address. We were asked to delay that
44 because there are a number of meetings taking place between July and August that



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1 people felt would be beneficial before they came back to us. And so we have now taken
2 a meeting that was, I think, fairly urgent on the part of the Council and moved it, not one
3 week, not two weeks, but nearly three months; effectively, a quarter of a year. And so
4 we won't be addressing our Positive Youth Development issues until September, which,
5 by the way, is roughly the time that school starts again. So things that we'd hoped to
6 have in place for the upcoming school year we likely will not have; and we likely will not
7 have in place or have the ability to discuss until we get to later fall or midway through
8 the next school year. And I guess I would just point out that the whole focus of these
9 programs is to reach out to those youth in our community who we think need more
10 support and more reinforcement. And the longer we take to actually put a real program
11 or agenda on the table, the more youth we potentially run the risk of having fallen
12 through the cracks. And so I would just put that out there that there are actual
13 consequences to our delays. And it's easy to say, well let's just postpone something for
14 a week or two or a month or three, but practically there is going to be an impact on
15 someone's life because we couldn't get the right answers out there and we couldn't get
16 the right programs in the hands of the right officials to put in front of our children. And I
17 think it is important for us to recognize that delay is significant. It's not just a matter of
18 changing something on a calendar. It impacts real people's lives, and we need to know
19 that. So I just wanted to put that out there. I appreciate the efforts the people have put
20 into this, but I think that at some point we need to recognize we need to be accountable,
21 we need to get things brought before us, we need to make decisions, and we need to
22 move ahead in a timely fashion. The second element I would just ask for is, on the
23 Consent Calendar, is Item C, which for Introduction - Supplemental Appropriation to the
24 CIP for the Silver Spring Transit Center. I understand that there has been some value
25 engineering to reduce the amount of money that has come over to us in this
26 supplemental. I would just ask the committee as they examine this to give us some
27 sense as to what that value engineering has been, and if we actually think this is the last
28 supplemental that will come to County Government as it relates to the Silver Spring
29 Transit Center, or if there is an expectation that we will end up having to come back to
30 this. This is a very important project, but as we all went through the CIP two or three
31 months ago, it's important for us to understand the full costs of the projects as we begin
32 to approve them, not kind of dribbling this out over a period of time. And so I would urge
33 the Chair to look into that a little bit and the full committee, and I would thank them for
34 their efforts. With that I see no further discussion on the Consent Calendar. All in
35 support of the Consent Calendar indicate by raising your hand. That is unanimous.
36 Thank you very much. We now turn to Action on a Confirmation of County Executive
37 appointment to the Washington Suburban Sanitary Commission, Roscoe M. Moore, Jr. I
38 will turn to the Chair of the T&E Committee.

39
40 Councilmember Floreen,

41 Thank you very much. Well, Mr. President, timing is everything. And we have before us
42 just a terrific candidate to take over as a member of the -- as the Commission for the
43 Washington Suburban Sanitary Commission. They've gotten a lot of attention recently.
44 It has been a bad stretch. But I am absolutely persuaded, based on our conversation



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1 with him the other day, that Roscoe Moore, Jr., DVMPHD [inaudible], who has served
2 all over the world has clearly has dealt with interesting situations, complex needs and
3 challenging environments, is just the guy for us. So I'm pleased to move approval of the
4 County Executive's proposal to appoint him as the Commissioner of the WSSC.

5
6 President Knapp,
7 Excellent. Councilmember Leventhal.

8
9 Councilmember Leventhal,

10 I agree with Ms. Floreen that Dr. Moore has extraordinary qualifications and we're very
11 fortunate that he has agreed to serve. I just wanted to say that it seems to me that we
12 have an opportune moment now in the coming months to really focus both counties on
13 the governance of WSSC. The governance is not working, and I we as a Council have
14 got to work with our County Executive, we need to try to get some dialogue going to
15 Prince George's County. I am increasingly clear that any decision-making body with an
16 even number of members is an unfortunate framework. And we need to get to a
17 tiebreaking position at WSSC. I spoke with the County Executive about this yesterday.
18 None of us -- we all appreciate and hope for good neighborly relations with our next-
19 door neighbor, Prince George's County, whether the -- in the long term it makes sense
20 for us to continue to share our water utility and sewer utility is a question that might be
21 addressed, but in the near term, and I would hope even as early as the 2009 General
22 Assembly session, we've really got to get a better way to break the impasses which so
23 often come up. The County Executive told me that he has had an excellent conversation
24 with County Executive Johnson; they hope to identify some strong candidates for
25 general manager that will pass the commission. They're not there yet. That's an
26 unfortunate situation. We had one of the worst public health emergencies -- well the
27 worst public health emergency that in my six years on the County Council just in the last
28 few weeks here in Montgomery County. Citizens are focused on this and I think there's
29 an opportunity to appeal to the best natures of our legislatures and hopefully, in both
30 counties, to get a change in the governance of this Commission. So we welcome Dr.
31 Moore. He comes at a time of great attention and great importance for that commission.
32 But I really hope that we can unite around legislation in Annapolis that would enable us
33 to break the impasses on so many critical issues that face that Commission.

34
35 President Knapp,
36 Excellent. I will take that as a second. And I would also second your remarks. I had had
37 some conversations with folks yesterday saying the same thing; that we can no longer
38 have the commission with six people. That just doesn't work. And clearly the issues we
39 have before us as it relates to aging infrastructure and the resources required to
40 address that, as well as all the other issues that have managed to bog down over the
41 last years, we can't deal with that anymore. And so I would agree. And I think this
42 Council, working with the County Executive, ought to work without delegation to put
43 forward a legislative proposal, a series of legislative proposals that will allow us to break



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1 that deadlock and move ahead. And so I agree very much with your statement and
2 appreciate your making it. Councilmember Floreen.

3
4 Councilmember Floreen,

5 Well, let me just add as most folks know that it's a matter of state law as you've alluded
6 to. But I do think Mr. Moore may be perhaps the secret ingredient that helps us get this
7 done. A lot of this, you know, interpersonal challenges of working together complex, as
8 we all know. I do think that this appointment will help. At the end of the day though it is
9 up to the two County Executives to agree on the strategy, and I do agree with Mr.
10 Leventhal; sometimes it takes a crisis to move people into action. And we all have been
11 around this block a number of times, and now we need to move together around the
12 block. And maybe this time is the time to get something done.

13
14 President Knapp,

15 Very good. Council Vice President Andrews.

16
17 Vice President Andrews,

18 Thank you, President Knapp. Well I wanted to agree with my colleagues that our water
19 and sewer service is too important to our constituents to be put at risk by a system that
20 often produces political deadlock. And it needs to be addressed, and this is the year to
21 do it.

22
23 President Knapp,

24 Excellent. And I also would voice my support, along with those of the members of the
25 T&E Committee, for Dr. Moore. I think that's the right prefix, given all the initials after his
26 name, I'm sure which is right. I think doctor is safe. No, he clearly has a stellar
27 background, and given the issues that are confronting WSSC and the community, I'm
28 very, very pleased that he was willing to serve in the first place, and think he will be an
29 excellent addition. So thank you very much for Dr. Moore. Seeing no further discussion
30 on the confirmation, all in support of the confirmation of Roscoe Moore for WSSC
31 please indicate by raising your hand. That is unanimous. Thank you all very much; and
32 congratulations, Dr. Moore. We now turn to Legislative Session Day #21; approval of
33 the Legislative Journal, Madam Clerk.

34
35 Council Clerk Crystal Brockington,

36 Yes, the Legislative Journal of June 10, 2008.

37
38 President Knapp,

39 Is there a motion?

40
41 Councilmember Trachtenberg,

42 So moved.

43
44 President Knapp,



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1 Moved by Councilmember Trachtenberg.

2
3 Councilmember Leventhal,
4 Second.

5
6 President Knapp,

7 Seconded by Councilmember Leventhal. Any discussion on the Legislative Journal?
8 Seeing none, all in support indicate by raising your hand. That is unanimous. Thank you
9 very much. Introduction of Bills. Bill 27-08, Motor Vehicles and Traffic, Parking
10 Regulations, Commercial Vehicles, Recreational Vehicles, and Busses, sponsored by
11 the Council President. Public Hearing is scheduled for July 22, at 7:30 p.m. We now
12 have call of Bills for final reading; Expedited Bill 7-08 - Personnel Retirement Group F,
13 Mandatory Retirement. We have an MFP Committee recommendation, but I'll turn to the
14 Chair of the MFP Committee, Councilmember Trachtenberg.

15
16 Councilmember Trachtenberg,

17 Thank you, President Knapp. Again, this was a Bill that had been on last week's
18 agenda, so we are revisiting it. And we did have a conversation and a recommendation
19 of sorts from the committee. Just for refreshing purposes I'm going to go through the
20 elements of what we've got in the Bill, and then the one issue that clearly we're going to
21 have to make a decision on this morning. Again, this Bill would simply implement the
22 retirement law changes that were negotiated by both the Executive and the Fraternal
23 Order of Police pursuant to the re-opener for the second year of the current agreement.
24 And in effect, the Bill would change the retirement date for a Group F member to 25
25 years of credited service regardless of age. The Bill would shorten the notice a Group F
26 member must give the County to retire. And it would also eliminate the mandatory
27 retirement age for all members, and reestablish the discontinued retirement service
28 program drop for Group F members. And, again, in its original form, the Bill would
29 change the formula for calculating pension amount of a Group F member who retires on
30 a normal retirement by increasing the maximum number of years of credited service and
31 the maximum benefit with sick-leave credits. The one issue that came up last week,
32 again, it came up after an amendment was provided by OHR to us for discussion. And
33 issue raised was the issue of buying service credits for periods of leave without pay.
34 There was an amendment to that amendment that was provided to the committee
35 yesterday for discussion, again prepared by OHR with the cooperation of FOP. I am
36 assuming that a supplementary packet put together by staff has been provided to all
37 Councilmembers. If you look on that, there is on page A the amendment as provided by
38 OHR yesterday morning. And there's also a staff version of another amendment for
39 consideration on page B. The recommendation of the committee, again, we did not
40 have three, just myself and Councilmember Praisner were present for the discussion
41 and the vote; and my preference was to adopt the OHR/FOP amendment, again the
42 one on page A, that would preclude an employee found guilty of a felony from buying
43 back service credits. And my colleague, Councilmember Praisner, would retain the



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1 original restrictive language in Bill 7-08 as introduced. So that is still the item for
2 discussion within this body.

3
4 President Knapp,

5 Thank you very much. We have some questions; Councilmember Leventhal.

6
7 Councilmember Leventhal,

8 I want to thank the Chair of the MFP Committee for whatever efforts she made to bring
9 the parties together on this. I think that the supplementary packet offers a way out of
10 this dilemma, and I'm glad to see that FOP and OHR are jointly submitting this. I'm very
11 happy to support this language on Circle B. I do want to ask my good friends at OHR in
12 further, as was raised in the main packet, if OHR is going to send to Council proposed
13 legislation implementing a negotiated agreement, please in future have all parties to the
14 agreement proof read the text before it's sent to Council. Because I'm really very
15 disappointed that a small thing here became a large thing, and now instead of -- first of
16 all let me be very clear about what we're talking about here. Police officers pay out of
17 their own pocket both their own contribution and the employer's contribution in order to
18 be eligible for their high three years of service to buy into the retirement system. So
19 we're talking about police officers, themselves, on relative limited salary digging into
20 their own savings in order to be eligible for the pension that was promised to them at the
21 time they were hired. So this is really a very benign and appropriate thing in my
22 judgment that we are doing. Because of an error and, you know, human beings make
23 errors; I'm not beating anybody up over it. All of a sudden we're focused on police
24 officers being disciplined, which was never the point of this at all. So now we're talking
25 about police officers committing felonies, for heaven's sake, which is purely hypothetical
26 and imaginary, and has really nothing to do whatsoever with the subject at hand. But
27 having said that, I appreciate that FOP and OHR have corrected the error; let's try in
28 future to make sure that we proofread what comes over here. We're in an environment
29 where, you know, the public is increasingly aware, thanks to our friends in the
30 journalism industry, of some small details of these negotiated agreements. That's fine.
31 That's healthy. But let's make sure that through our errors we're not casting an
32 unfortunate light on our law enforcement personnel. This never should have been a
33 conversation about discipline or certainly about police officers committing felonies. That
34 was never the point. And I'm very sorry that we got here; but I'm glad that we have
35 reached an agreement. And I'm happy to support this agreement.

36
37 President Knapp,

38 Thank you. Councilmember Floreen.

39
40 Councilmember Floreen,

41 Thank you. I had a question. It was explained to me on this issue that there already are
42 a variety of ways that you can buy back or you can buy service credits, as I understand
43 it, which is, I have to say, it would be helpful to understand the context of this
44 information when we get it from staff, so that we see how it fits in. Can you remind us of



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1 what the opportunities for buying back credits are that currently exist? Because it was
2 explained to me that there are quiet a few already.

3
4 Bob Drummer,
5 Well, in a disciplinary situation, I think that's what you're talking about.

6
7 Councilmember Floreen,
8 Just generally, you can buy service credits under what situations?

9
10 Bob Drummer,
11 Well, that's what this provision is going to do it's going to allow you to have -- .

12
13 Councilmember Floreen,
14 I know that. There are other -- already -- .

15
16 Bob Drummer,
17 Absent that -- .

18
19 Councilmember Floreen,
20 There already are opportunities for that. Are you familiar with those?

21
22 Bob Drummer,
23 The only thing I'm familiar with is what's in the collective bargaining agreement, which
24 allows an officer who has been suspended without pay to use annual leave to buy back
25 the time.

26
27 Councilmember Floreen,
28 So that's already available?

29
30 Bob Drummer,
31 That's already available, yes.

32
33 Councilmember Floreen,
34 Okay. Thanks. I mean, I think it goes to the question of understanding the context in
35 which these things are negotiated.

36
37 Michael Faden,
38 There are a lot of other reasons an employee can be on leave without pay beyond
39 disciplinary.

40
41 Councilmember Floreen,
42 Right.

43
44 Michael Faden,



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1 In those situations the point of this original amendment is to allow them to buy back the
2 service credit.

3
4 Councilmember Trachtenberg,

5 And actually to help clarify matters, Councilmember Floreen, it's my understanding that
6 when this item was up for discussion, or came up for discussion, it was really a result of
7 a unique situation with one employee who had been on some extended family leave,
8 actually charged with the care of an elderly parent. And so it was actually that which
9 prompted the discussion. And I believe Mr. Bader talked a little bit that both yesterday
10 and then last week with us.

11
12 Councilmember Floreen,

13 Well I'd just say, again, it's helpful to understand for those of us who are not part of the
14 MFP Committee and at least are confronted with these decisions, it is helpful to
15 understand the overall context in which these conversations have occurred in another
16 arena. And so I would ask staff in the future when these things come along, hopefully
17 they won't, because I agree with Mr. Leventhal. I think this has been blown out of
18 proportion given the overall program that already exists. So that's why it's helpful to get
19 the context certainly for our conversation.

20
21 Councilmember Trachtenberg,

22 Well I would agree with that assessment, because we've visited this topic at least three
23 times in committee work session. And it was something that was discussed and decided
24 in terms of policy by the full Council back during the budget exercise. So it came back to
25 us, and I would agree that it's, A, better to get everything on the front end, a complete
26 package, as Councilmember Leventhal has indicated. And also it's important to have
27 perspective around how these things were discussed and negotiated in the first place.

28
29 Councilmember Floreen,

30 Well, and that's what I -- so it would be helpful, at least for my perspective in the future if
31 staff could include some of the contextual elements that obviously have been part of
32 that exchange. Thank you.

33
34 President Knapp,

35 Councilmember Elrich.

36
37 Councilmember Elrich,

38 I'm also happy to see the agreement come forward in the common language that people
39 were able to arrive at. One of the things that concerned was the differential impact that
40 this would have on people; that if you were to be suspended, leave without pay, early in
41 your career, the punishment is leave without pay and no impact on your pension. If you
42 get suspended with leave without pay at the end of your career, you get the same
43 penalty as somebody early in their career, and then you get this extra hit on your
44 pension. And it seems to me that, you know, that it shouldn't be a different penalty for



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1 when an act occurs. And it's seemed most [inaudible] to have structured it the way it
2 was being suggested. So I'm happy with the compromised language that's reached, and
3 I'll be happy to support it.

4
5 President Knapp,

6 Okay. I would also like to extend my appreciation to the chair of the committee for
7 navigating through this. And also the part I'm appreciative of is the fact that the parties
8 to the contract, the Executive Branch, OHR and FOP, went back and negotiated as the
9 parties, and came back with a resolution to an issue that unfortunately on the basis of
10 an error; but went back and talked to each other and came forward with an alternative
11 proposal. And I think that's how the process is supposed to work, the way at least we're
12 currently structured. So I appreciate everyone doing that and bringing it back to the
13 committee and for us resolving it the way that we should. So I appreciate all the parties'
14 efforts to get us through this. It was a mishap. Hopefully we won't have too many
15 mishaps, although they do happen sometimes. And so I appreciate everyone's efforts to
16 get this resolved. Seeing no further discussion on Expedited Bill 7-08, I would ask the
17 Clerk to call the roll.

18
19 Council Clerk Crystal Brockington,
20 Mr. Elrich.

21
22 Councilmember Elrich,
23 Yes.

24
25 Council Clerk Crystal Brockington,
26 Mr. Praisner.

27
28 Councilmember Praisner,
29 Yes.

30
31 Council Clerk Crystal Brockington,
32 Ms. Floreen.

33
34 Councilmember Floreen,
35 Yes.

36
37 Council Clerk Crystal Brockington,
38 Ms. Trachtenberg.

39
40 Councilmember Trachtenberg,
41 Yes.

42
43 Councilmember Floreen,
44 We switched spots.



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1
2 Council Clerk Crystal Brockington,
3 Mr. Leventhal.

4
5 Councilmember Leventhal,
6 Yes.

7
8 Councilmember Trachtenberg,
9 Just keeping you on your toes.

10
11 Council Clerk Crystal Brockington,
12 Ms. Ervin.

13
14 Councilmember Ervin,
15 Yes.

16
17 Council Clerk Crystal Brockington,
18 Mr. Berliner.

19
20 Councilmember Berliner,
21 Yes.

22
23 Council Clerk Crystal Brockington,
24 Mr. Andrews.

25
26 Vice President Andrews,
27 No.

28
29 Council Clerk Crystal Brockington,
30 Mr. Knapp.

31
32 President Knapp,
33 Yes. Bill 7-08 is agreed to, 8-1. We now turn to Expedited Bill 8-08, Personnel, Disability
34 Retirement, Group G; Chair Trachtenberg.

35
36 Councilmember Trachtenberg,
37 Okay, thank you, President Knapp. Another Expedited Bill that has come back within
38 the MFP Committee. I'm going to, again, summarize what the Bill does, and then bring
39 up the two issues again that were very much a part of the conversation that we had
40 within MFP yesterday afternoon. Again, this Bill would implement the change in the
41 disability retirement law as negotiated by the County Executive and the Montgomery
42 County Career Fighters Association. The Bill would make a Group G member who
43 incurs esophageal, lymphatic, testicular, brain, lung, bladder or kidney cancer, multiple
44 myeloma, melanoma, and any blood-borne pathogen automatically eligible for a



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1 service-connected disability retirement benefit under certain conditions. The elements
2 that were discussed within the committee yesterday afternoon, one referred to the issue
3 of the rebuttal presumption; the other was establishing a period of time, a threshold for
4 making such an application for the disability. And there was a split recommendation
5 from the committee. Again, keep in mind that both Councilmember Praisner and myself
6 were present at the time of the vote in the committee and for the discussion.
7 Councilmember Ervin was out of the Council on other Council business. So the
8 recommendation from the committee -- or from Don was to not have language in the Bill
9 for rebuttal presumption. In other words, the disability would be automatic and I agreed
10 with that. So that is a clear recommendation from the committee that there be no
11 language in there for rebuttal presumption. And the second part -- the second element
12 of the recommendation from the committee would relate to the time issue that I
13 mentioned. Councilmember Praisner wanted to establish a five-year period. I took my
14 original position and have stayed with it, again, through the last few months, which is
15 that I do not want to insert any waiting period. I don't want to put a five- or ten-year
16 period in there. Originally the staff recommendation was for ten; and again,
17 Councilmember Praisner was comfortable with inserting a five-year period. So that is
18 the recommendation or no recommendation from the committee. So it's, again, a
19 question of the will of the body.

20
21 President Knapp,
22 Very good. Councilmember Ervin.

23
24 Councilmember Ervin,
25 Thank you very much. I just wanted to be really clear before I know which way I'm going
26 to go. So in my notes from my staff I was under the assumption that you and
27 Councilmember Praisner wanted to make -- you want to make it a rebuttal -- okay that
28 was the first -- thank you very much. So where we are right now is the two members of
29 the committee are recommending five-year rebuttal.

30
31 Councilmember Trachtenberg,
32 No.

33
34 Councilmember Ervin,
35 Okay, what -- tell me again what is before the Council today?

36
37 Councilmember Trachtenberg,
38 Councilmember Praisner was making that recommendation that we insert language for
39 a five-year threshold. I have continued to take the position that I won't insert -- no
40 timeframe in the language of the Bill. I don't want to put in five or ten years, or any
41 amount of time. I want there simply to be an automatic function.

42
43 Councilmember Leventhal,



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1 Parliamentary inquiry? Would it not be in order, Mr. President, if the Chair of the MF --
2 there is no committee recommendation therefore.

3
4 Councilmember Trachtenberg,
5 Right.

6
7 Councilmember Leventhal,
8 So would it not be in order for the Chair of the committee to make a motion stating her
9 preference; that motion would then be -- have to be seconded, because as I understand
10 it -- .

11
12 President Knapp,
13 Correct.

14
15 Councilmember Leventhal,
16 Now there isn't anything actually before us.

17
18 Councilmember Trachtenberg,
19 Right, well, I wanted to afford colleagues an opportunity to make comments before I did
20 that. But it would be my desire at this time to make a motion to as recommendation to
21 my colleagues that there actually be no rebuttal presumption, and, again, no waiting
22 period.

23
24 Councilmember Leventhal,
25 Second.

26
27 President Knapp,
28 Moved and seconded. So we have before us the recommendation, not the committee
29 recommendation for no rebuttable (sic) resumption and no specified waiting period.
30 Council Vice President Andrews.

31
32 Vice President Andrews,
33 Thank you, President Knapp. Well I'm going to speak against the recommendation. I
34 agree that the evidence shows, and I appreciate the good staff work that was done by
35 Mr. Drummer and Mr. Faden, that there is evidence that there are higher incidents of
36 various cancers among firefighters. So I think that's important to recognize. But I think it
37 was also revealing in their analysis that every other jurisdiction that has set this kind of
38 system up has recreated a rebuttable (sic) presumption, according to what I saw in the
39 packet. And that makes sense to me. Because, for example, take lung cancer, which is
40 one of the cancers listed here; you could have a situation where someone had been a
41 heavy smoker for years prior to applying to the fire service. We have a rule you can't
42 smoke in the fire service, which is excellent. You can't be smoking when you're hired.
43 But you could have that kind of a situation, and if you don't have any kind of rebuttable
44 presumption or time limit, you could have a situation where a firefighter who comes



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1 down with lung cancer a year or two after joining the service would automatically qualify,
2 as I understand it, for this service-connected disability. And I don't think that makes
3 sense. I read the packet that Dr. Gadadi, who was contacted who was at the School of
4 Medicine at GW University, confirmed that the statistical evidence only supports a
5 rebuttable presumption. And so I'm persuaded by that. And I also saw that according to
6 the question that was asked by Council staff of the Office Human Resources about the
7 provision that the negotiators apparently did not review any medical literature on the
8 subject, according to the comment in the packet. So I do not think it is a good idea to set
9 this up without a rebuttable presumption, and a time limit that recognizes a latency
10 period that is present in almost all cancers of a significant amount of time. And I will vote
11 against the amendment.

12
13 President Knapp,
14 Councilmember Floreen.

15
16 Councilmember Floreen,
17 Thank you. I have a question of the County, not the Council staff, but of the County. You
18 didn't look at any -- according to this it says you didn't look at any literature on the
19 subject in the course of your exchange.

20
21 Sara Miller,
22 This provision -- I'm sorry, Sara Miller, OHR. This provision was negotiated within the
23 context of an overall agreement, and both parties discussed and discussed the
24 firefighters' proposal. There were a variety of proposals on the table regarding
25 retirement, and ultimately the parties came to an overall agreement on an economic
26 package, which included this provision, based also on the nature and the context of
27 firefighting in general.

28
29 Councilmember Floreen,
30 So it wasn't a piece-by-piece analysis, it was a package analysis. Well I appreciate that.
31 And the challenge to all of us of course is we weren't there. But I am trying to
32 understand this issue. Is there some feeling generally that in the early -- because of the
33 screening activity that a firefighter goes through to become a firefighter that this would
34 be identified as an issue so that its -- I mean, of course, the situation that raises concern
35 is someone, you know, starts on the job and immediately is identified as having this
36 dreadful situation that then the County becomes responsible for [inaudible]. So what's
37 the thinking -- how -- in your minds, how have you thought about that?

38
39 Joe Adler,
40 It is a very rigorous prescreening of firefighter candidates that has to go through the fire
41 occupational medical service. And they go through both physical agility and physical
42 condition so that if they do have a precancerous condition, it is identified at that point.

43
44 Councilmember Floreen,



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1 So the precancerous elements that can be identified, at least, are identified as a
2 screening element at the get-go.

3
4 Joe Adler,

5 At the point where they are candidates [inaudible] -- if it prevents them from being a
6 firefighter, then obviously they cannot join. But if it's acceptable then it's in the baseline
7 so then we do know later on what the firefighter -- what conditions the firefighter had
8 preexisting before they joined the service.

9
10 Councilmember Floreen,

11 So what -- how do you handle a precancerous situation that you identify?

12
13 Joe Adler,

14 Well if it's -- we have both ADA and HEPA rules, but if the -- if it prevents the firefighter
15 from performing essential elements of the position then obviously they cannot proceed.
16 If with accommodation they can still perform the job, then the candidate moves forward.

17
18 Councilmember Floreen,

19 And that's because of HEPA.

20
21 Joe Adler,

22 That's with the ADA.

23
24 Councilmember Floreen,

25 Under the ADA. So that would be an obligation that the County would be subjected to
26 under any circumstances.

27
28 Joe Adler,

29 Yes, the County -- right.

30
31 Councilmember Floreen,

32 Okay, thank you.

33
34 President Knapp,

35 Councilmember Berliner.

36
37 Councilmember Berliner,

38 I confess I'm struggling with this, and like some of my colleagues in my second year
39 trying to understand my responsibility in a larger negotiated agreement. I will say to my
40 friends in the firefighters, I admire their work. I get that there is a higher incidence of
41 these diseases. As a lawyer, I don't why I'd move beyond rebuttable presumption.
42 There are going to be incidents where if the County were able to demonstrate that this
43 is not in fact related to their occupancy what their job-related performance that you
44 wouldn't provide this. So I never understood why one would move beyond a rebuttable



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1 presumption to automatic. And I -- quite frankly, I don't understand how, with greatest
2 respect to the committee chair, how six months after if somebody has this, one of these
3 terrible diseases, that it automatically presumes that it is a function of the job. Because
4 that just doesn't make sense. I could happen three months after somebody gets on the
5 job. So talk to me about the second piece, the fact that there is no waiting list which --
6 staff would you confirm; you have found no jurisdiction that has adopted this type of
7 provision without some waiting list.

8
9 Bob Drummer,

10 No, I -- we haven't found one without making it a rebuttal presumption.

11
12 Councilmember Berliner,

13 Have you found any that make it automatic as of day one?

14
15 Bob Drummer,

16 Yeah, I mean, actually the state law for Workers' Comp doesn't have an ill -- in number
17 of service year's component for firefighters, but it does have a rebuttal presumption.

18
19 Councilmember Berliner,

20 Rebuttable presumption. So the two sort of work together in that regard if -- as long as
21 you have the rebuttal presumption, you don't need a waiting period, because the waiting
22 period, in effect, is to make some connection between actually contact getting the
23 disease and job performance and getting it on the job.

24
25 Bob Drummer,

26 Yeah. If you have no waiting period but you have a rebuttable presumption, then the
27 employer would be free to argue that the occurrence so early in someone's career
28 means it's not related to, you know, work as a firefighter. The period -- the time periods
29 come in because the statistical analysis and the medical literature shows that the
30 incidents of these diseases for firefighters is much greater for firefighters who have
31 worked a certain number of years, and it's not much greater for firefighters in their first
32 year of service. So they look at, you know, number of years. And it's all statistical
33 analysis, you know, that the incidents -- the incidents of all these cancers are very rare,
34 so they don't really have great statistics.

35
36 Councilmember Berliner,

37 Do you have -- I'm seeking guidance from staff. Here we are, and I know each of our
38 colleagues go through this calculation individually. Do you have recommend -- how are
39 we supposed to deal with an issue in a larger collective bargaining agreement in which
40 we are basically hearing that they are not going to defend this particular provision
41 except that this particular provision is part of a larger package. And here we are taking a
42 look at a provision that some of us say, on its own, we wouldn't go there. But we're told,
43 well it's not on its own; it's part of this larger package. It was part of the give and take.
44 We might have traded off something else for this piece. And maybe the firefighters



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1 would have traded off something else if they hadn't gotten this piece. How are we
2 supposed to, at this moment in time, come to terms with that set of dynamics?

3
4 Michael Faden,
5 We [inaudible].

6
7 Councilmember Berliner,
8 I'm looking -- I'm looking -- .

9
10 Councilmember Trachtenberg,
11 And we've been having this particular conversation since May.

12
13 Michael Faden,
14 It is a problem inherent in the collective bargaining process. But we can tell you that the
15 agreement between the parties is to submit legislation to the Council. All parties are
16 aware that the Council has the authority to accept, reject or modify this legislation.
17 Some Councilmembers choose to say, because it comes from a collective bargaining
18 agreement, we will accept it or accept it unless it's totally out of line. Other
19 Councilmembers take a more active review point of view. But the parties know coming
20 in that the legislation has to -- that all they are doing is proposing it, and it has to be
21 approved by the Council.

22
23 Councilmember Berliner,
24 And then we have the conversation after approving it whether, of course, we can do
25 something about it in the later years. So it seems we have to take a stand at some
26 point, and this seems to be the time to make the stand with respect to this one. So I
27 appreciate your guidance on that.

28
29 President Knapp,
30 Councilmember Leventhal.

31
32 Councilmember Leventhal,
33 Mr. Adler, you referred to the physical screening that takes place before a firefighter is
34 hired; is it not the case that someone who is a smoker will not be hired as a firefighter?
35 Am I wrong about that?

36
37 Joe Adler,
38 That's my understanding.

39
40 Councilmember Leventhal,
41 So the issue of lung cancer caused by smoking would not really apply here, because if
42 you're a smoker you're not going to get hired as a firefighter; am I correct?

43
44 Joe Adler,



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1 If you're identified as a smoker, yes, that's correct. And you cannot continue to smoke
2 while you're in the service as well.

3
4 Councilmember Leventhal,
5 Okay. I understand we're trying to map out what are the scenarios here. If very
6 unfortunately someone contracts cancer and it is terminal, then the length of time that
7 the County is going to be paying disability is not that long. If someone contracts cancer
8 and is cured of cancer then presumably they may not be disabled. They may be able to
9 go back to work. So let us forecast what are the real consequences here. The likelihood
10 that you have someone with cancer with a very rare cancer, of whom there are not,
11 thankfully, many people who contract it in the first place. How many firefighters do we
12 have?

13
14 Joe Adler,
15 About 1100.

16
17 Councilmember Leventhal,
18 About 1100 firefighters, and in the general population the incidents of these cancers
19 may be 1 in 10,000 or something -- something in that range. So the likelihood that
20 you're going to have a whole lot of firefighters conning the County and living for years
21 with cancer and drawing a line -- a lot of illegitimate dollars in disability retirement is
22 deminimis, it isn't going to happen in fact. So I just wanted to make it clear what we're
23 talking about.

24
25 Joe Adler,
26 That is correct.

27
28 Councilmember Leventhal,
29 Okay. The other thing is, is it not true that we have a number of people who joined the
30 fire service having been volunteer firefighters for some period of years?

31
32 Joe Adler,
33 Yes.

34
35 Councilmember Leventhal,
36 Quite a lot.

37
38 Joe Adler,
39 Yes.

40
41 Councilmember Leventhal,
42 So you have people who may join, and when we talk about the latency period, they
43 have been exposed to these toxics during their period of service as volunteers.



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1 Joe Adler,
2 Correct.

3
4 Councilmember Leventhal,
5 Thank you. I just wanted to put those items on the record.

6
7 President Knapp,
8 Thank you. Councilmember -- Chair.

9
10 Councilmember Trachtenberg,
11 Well, actually, you know, that's an interesting question. And when this screening
12 happens, isn't that part of the screening that one does identify that they had been a
13 volunteer.

14
15 Joe Adler,
16 Yes.

17
18 Councilmember Trachtenberg,
19 Okay.

20
21 Joe Adler,
22 And as a reason of collective bargaining with the volunteers, they now go through --
23 volunteers also go through the same physical screening process.

24
25 President Knapp,
26 Council Vice President Andrews.

27
28 Vice President Andrews,
29 Thank you. I appreciate the, always, the fine mind of my colleague, Councilmember
30 Leventhal, but I don't believe his argument has made the case against having a
31 rebuttable presumption. In the case of lung cancer, it's my understanding that while the
32 County -- and I applaud this -- does not hire firefighters who are current smokers, it
33 doesn't extend to whether people have smoked in the past. And so you could still have
34 that issue of someone who had smoked for years being hired as long as they are no
35 longer smoking. That's correct, isn't it?

36
37 Joe Adler,
38 I would have to go and check with OMS, but that's my understanding; that the current
39 smoker will not be hired. Someone who smoked ten years ago, fifteen years ago, and
40 there's no way of identifying that behavior unless they are precancerous.

41
42 Vice President Andrews,
43 Okay. And in the case of volunteers who go into the fire service, which is a wonderful
44 thing to have volunteers in the first place and volunteers who become career



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1 firefighters, if you have the rebuttable presumption that would be taken into account. Not
2 having the rebuttable presumption makes it automatic in all cases, regardless of the
3 circumstances, and that doesn't make sense.

4
5 President Knapp,
6 Councilmember Ervin.

7
8 Councilmember Ervin,
9 This question is to County Executive staff, OHR staff about bargaining. This keeps
10 coming back up, but some -- you do keep notes of your conversations during
11 bargaining. Is that -- are those notes sealed somehow, or are they -- can we see them.
12 And the reason I'm asking is because time and time again if we're going to keep coming
13 to this place where we're trying to figure out the context for all these conversations that
14 took place during bargaining, if we're going to go there, send us the notes. Is that
15 something that's possible? Or are those notes sealed?

16
17 Sara Miller,
18 The ground rules that we live by that we signed when we negotiate precludes us from
19 talking about what happened in the actual sessions during the course of negotiations.
20 As to whether or not our notes are available, I'd refer that to the County Attorney's
21 Office. I honestly can't answer that question.

22
23 Councilmember Ervin,
24 Well I'd like to ask Council staff what they think about that notion.

25
26 Michael Faden,
27 We have not researched it. We would like to talk with County Attorney and OHR and get
28 you an answer.

29
30 Councilmember Ervin,
31 Thank you.

32
33 Joe Adler,
34 And both sides keep their own notes. There is no stenographic note-takers. So both the
35 Union and County have someone that takes notes for them and for their own purposes.

36
37 Councilmember Ervin,
38 I mean, it's just interesting to note that Councilmember Leventhal, who raised really
39 excellent points as he always does, really it's like pulling it out of you all to give us some
40 more information about that context of the bargaining conversation. And we're being
41 asked to make some very, very difficult decisions almost on the fly. We don't have the
42 same kinds of, you know, time to sit down with your team of experts and attorneys and
43 subject-matter experts; I think in the packet we had this one study. I mean, we're being
44 asked to make some very significant decisions without the kind of information that you



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1 all had over a long period of time. And so I'm going to vote for this because I believe
2 very strongly in the process of collective bargaining, and I know what went into the
3 bargaining process resulted in this. But if we're going to keep going here year after year
4 after year, then it seems to me that we need to have the benefit of the same kinds of
5 information that you all have.

6
7 President Knapp,
8 Councilmember Elrich.

9
10 Councilmember Elrich,
11 I just want to add to that, that I think more generally we need to examine the bargaining
12 process. It is really painful to sit on this side and be asked to approve agreements to
13 which we've played absolutely no part at all, do not know any of the arguments
14 whether we're talking about a benefit like this or whether we're talking about the money,
15 where people negotiate things who aren't responsible for finding the funds to pay for
16 things. We need to change this dynamic. And I'm where Valerie is. I mean, this is a
17 negotiated agreement and I'll support the negotiated agreement. But this is the wrong --
18 this is not just the way we should be doing things here. We need to figure out how we
19 get more of the people who are responsible for making decisions sitting at the table and
20 being part of that decision-making process.

21
22 President Knapp,
23 Councilmember Floreen.

24
25 Councilmember Floreen,
26 If this were not approved, does this make it -- does this cause the contract to be
27 reopened, the conversation -- the negotiations to be reopened.

28
29 Michael Faden,
30 For this item.

31
32 Councilmember Floreen,
33 Yes.

34
35 Michael Faden,
36 Yes.

37
38 Councilmember Floreen,
39 But, I mean, does it trigger all the other issues that may have been folded into an overall
40 package to come up?

41
42 Sara Miller,
43 No it doesn't in this context. It's silent in the County Code for all of the bargaining units;
44 however, in the FOP agreement, there are particular provisions within the agreement



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1 that trigger the reopening of all economic items. The same provisions are not in the
2 MCGEO agreement or in the IAF [inaudible] agreement.

3
4 Michael Faden,
5 And we have strong doubts as to whether that provision in the FOP agreement is
6 consistent with the County Code.

7
8 Councilmember Floreen,
9 Well how do we address that?

10
11 Michael Faden,
12 It's not -- at this point -- at this point it's not before you.

13
14 President Knapp,
15 That's not the [inaudible]. We don't have to worry about that today.

16
17 Michael Faden,
18 In the long run that does need to be addressed, but it's not before you now.

19
20 President Knapp,
21 Chair Trachtenberg.

22
23 Councilmember Trachtenberg,
24 If I could interject at this point; obviously, we've been having a series of conversations
25 for quite a few months on many -- many times the same topic over and over again. And
26 what's really clear to me, and I know my colleagues who sit on MFP, Councilmember
27 Ervin and Councilmember Praisner, is that indeed we do need to clean up the process
28 here. And the Council needs to have a much better understanding of terms, but more
29 importantly, the rationale behind decisions that are made and negotiated in good faith.
30 And I would expect in the months ahead, specifically in the autumn, that we actually
31 have some meaty discussions around the very issues that are being raised this morning
32 by my colleagues. It is time to cleanup the process, because we are being asked to
33 make decisions, I think Valerie's words on the fly are quite apt, because that's how I
34 feel. And quite frankly, I expressed my frustration last week around this because, A, I
35 was seeing amendments at the last moment without the benefit of a committee
36 discussion. But I also feel that taking snippets out of context, and that's what I would call
37 them, and asking us to make a decision without the benefit of context and perspective is
38 really unfair to us, and it's not, quite frankly, productive either. It's not productive at all.
39 And I have been very frustrated with the conversations that we've continued to have
40 about collective bargaining terms. I really don't want the conversation to continue in the
41 adversarial terms that it has been taking place. And I guess as the Chair of the
42 committee, I've had my share of phone calls and emails from both sides of the issue.
43 And it would just seem to me that my obligation as the Chair of the committee, and I
44 believe my colleagues on MFP agree with me, that we've got to put a better process in



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1 place because this doesn't really work. But the recommendation for me is on the floor at
2 this, to go forward with the proposal on both the rebuttable language and the time
3 threshold.

4
5 President Knapp,
6 We have one more comment or question.

7
8 Councilmember Trachtenberg,
9 Okay, I didn't see the light.

10
11 President Knapp,
12 Councilmember Berliner.

13
14 Councilmember Berliner,
15 Let me confirm what I understood staff to say with respect to the issue of rebuttable
16 presumption. You have not found any jurisdiction which has adopted legislation of this
17 nature without a rebuttable presumption; is that correct?

18
19 Joe Adler,
20 That's correct.

21
22 Councilmember Berliner,
23 I wasn't in the collective bargaining. I respect collective bargaining. I don't support this
24 modification; therefore, I would offer an amendment to the committee's recommendation
25 to reinsert a rebuttable presumption. I assume that amendment will go down, but I feel
26 like this is not a change that I believe is backed by logic or good public policy. I get that
27 these firefighters who do wonderful work and that we ought to support in every way
28 have a higher incidence of cancer. And rebuttal presumption supports them in that
29 regard. But it also means that in the rare instance in which the County chooses to
30 challenge it and is able to demonstrate that in fact it was not a function of being on the
31 job, to eliminate that possibility to me doesn't make sense. So this is going to lose, but I
32 really think if our job is to be independent stewards, even of these collective bargaining
33 agreements, that our responsibility is to look at them and see whether or not they make
34 sense as a matter of public policy, I don't get that this does. So I can't support it, and I'll
35 move to strike -- to reinsert the rebuttable presumption.

36
37 President Knapp,
38 Moved and seconded to have a rebuttable presumption. Councilmember Leventhal.

39
40 Councilmember Leventhal,
41 I think Mr. Berliner's amendment has a lot of merit. I'm not going to vote for it because I
42 just -- as I think through the real consequences, you know, either the cancer is going to
43 kill you or it's going to be cured. And so the -- if it's terminal in that sad case, the person
44 is not going to be drawing the benefits for very long. So these cancers are rare. So as I



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1 sort of forecast what is the real impact of this, I'm not really troubled by the drain on the
2 public treasury. But I think Mr. Berliner's amendment is, you know, a valid one, and I
3 appreciate the sentiment with which he offers it. It's a difficult choice as to how to vote
4 on it. I'm between two poles, as Chair Trachtenberg said, you know, picking out one
5 little piece of a broad agreement when we don't have the benefit of all the other pieces
6 of the agreement. And this hypothetical situation where a hypothetical firefighter sadly
7 contracts cancer, and there is some reason to question whether the cancer is service-
8 related. And I acknowledge that as you draw out that hypothetical case, you think gee,
9 shouldn't the County have some recourse in that case. I just think it's so hypothetical
10 and, frankly, pretty unlikely that I'm comfortable voting against Mr. Berliner's
11 amendment. But I think it has merit and I recognize the thought and care that he has put
12 into it.

13
14 President Knapp,
15 Councilmember Floreen.

16
17 Councilmember Floreen,
18 Well, I just wanted to say I don't disagree with Mr. Berliner's amendment either. But, you
19 know, this is an impossible box that we're put in. We have a draft set of terms that folks
20 have negotiated. We don't know what was on the table and what was taken off the
21 table. We don't know where the ellipsis is. There is a contract that this is amending. We
22 don't have that in front of us at this moment in time to discuss the whole set of
23 implications of all this. So I do think this is a process that is not a meaningful one at this
24 point in time, because we don't have access to the information. Yet, we are judged by
25 our behaviors based on little snippets. And I don't think that's right. I think it's frustrating.
26 And I don't think it's an oversight function that we're performing. We can't under the --
27 based on our position -- our lack of position at the table. We're not there. And I think the
28 way to address this is not by focusing on these minute pieces, but talking about the
29 overall process, and discussing -- we're either in it or we're out of it. We don't have -- we
30 can't function properly in a piecemeal basis. And I think, at least, we fund contracts,
31 we've had conversations earlier about the big tickets items. But again part of that
32 frustration for me was the issue of what are all the pieces associated with that. How
33 does it come out to the fiscal product that apparently the County Executive has bought
34 into? And the County Executive isn't here. So we don't have any kind of sense as to the
35 give and take in the exchange. And what did we get -- what -- by agreeing to this.
36 There's -- we don't know. And it's a secret, yet we're supposed to understand what was
37 in people's heads, what was in the back pocket of folks who were in the middle of these
38 conversations. So I just express my frustration and my concern about this process that
39 we are spending more time on this year than we have ever spent previously. And I think
40 it would be worth some examination of how we got to this point, and the functions of the
41 various parties, because this is the first year in six where we have had -- serve an
42 unending series of meetings on this subject. And it's a problem. If we're not going to
43 have all the information, I'm not sure how we can be expected to be useful and credible
44 and responsible players in all of this. So I support Mr. Berliner's approach in concept,



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1 but under the circumstances I can't bring myself to vote for it in the absence of a bigger
2 picture approach to all of this.

3
4 President Knapp,
5 Chair Trachtenberg of the MFP Committee final comments, and then we'll vote on the
6 amendment.

7
8 Councilmember Trachtenberg,
9 Actually the only comment I have is I hope that once we take action on this today, I
10 don't see Expedited Bill 8-08 in my committee again.

11
12 President Knapp,
13 Councilmember Berliner for the final comment.

14
15 Councilmember Berliner,
16 Thank you Council President. I would just say to my colleagues that if we want to be
17 players we need to play.

18
19 President Knapp,
20 Councilmember Praisner.

21
22 Councilmember Praisner,
23 I just want amendment we're voting on.

24
25 President Knapp,
26 The amendment we're -- the amendment before us was offered by Councilmember
27 Berliner to require a rebuttal presumption in Expedited Bill 8-08. So that is what we have
28 before us. Any further questions on that? Okay. All in support of the amendment as
29 proposed by Councilmember Berliner, indicate by raising your hand. Councilmember
30 Berliner and Council Vice President Andrews. All opposed, Councilmember Elrich,
31 Councilmember Praisner, Councilmember Trachtenberg, Councilmember Floreen,
32 myself, Councilmember Ervin and Councilmember Leventhal. The motion does not
33 carry. We now have before us -- one more amendment; Council Vice President
34 Andrews.

35
36 Vice President Andrews,
37 Thank you. Well, as imperfect as the collective bargaining process is in terms of the
38 Council role, the buck does stop here. And we are the guardians of the treasury and we
39 have to scrutinize. That's our job. I'm going to offer an amendment because it's
40 especially important if you don't have a rebuttable presumption to have a waiting period.
41 And this is what I consider to be at the low end of a waiting period, and I will put forward
42 that there be a five-year waiting period -- five-year period before the member would be
43 eligible for the disability -- the termination.



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1 President Knapp,
2 We have a motion before us to modify the recommendation to add a five-year waiting
3 period. Is there a second?

4
5 Councilmember Berliner,
6 There's a second.

7
8 Councilmember Praisner,
9 I second.

10
11 President Knapp,
12 Seconded by Councilmember Praisner. Councilmember Berliner.

13
14 Councilmember Berliner,
15 I'd just observe that given the desire of the majority on the Council to make people
16 automatically eligible, which no jurisdiction has previously done, that it is that piece that
17 makes this amendment more relevant. So if we're eliminating a rebuttable presumption
18 and making people automatically eligible so that in year one is somebody contracts this
19 terrible disease they would be automatically eligible; that to me doesn't make a lot of
20 sense insofar that it's difficult for me to imagine. Although Councilmember Leventhal
21 raises the good point with respect to volunteer firefighters, as to how it is that we would
22 be demonstrating that they had actually contracted this disease as a function of their on-
23 the-job performance. So I think a waiting period is appropriate if, in fact, we are going to
24 eliminate the rebuttable presumption.

25
26 President Knapp,
27 Councilmember Leventhal.

28
29 Councilmember Leventhal,
30 Well, again, I know that these amendments are well meant, and sincerely meant, but
31 we're dealing with great imprecision here. So, you know, someone contracts a disease
32 after 4 years, 11 months and 20 days of service and they don't get eligibility. It's just five
33 years is not based on science. I understand the basis for the offering the amendment,
34 but we have no reason to pick five years as a purely random number.

35
36 Vice President Andrews,
37 No, it's not.

38
39 President Knapp,
40 Council Vice President Andrews.

41
42 Vice President Andrews,
43 No, according to the packet in terms of the latency period, it's usually longer than five
44 years for most, if not all these cancers.



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1
2 President Knapp,
3 Councilmember Berliner.

4
5 Councilmember Berliner,
6 I think Councilmember Leventhal raises a good point. If we are in a situation where if it's
7 4 months and 11 years, and no eligibility would be re -- .

8
9 Councilmember Leventhal,
10 Four years, eleven months.

11
12 Councilmember Berliner,
13 Thank you. That doesn't seem right to me. So I would amend the amendment to make it
14 if it's less than five years, to reinsert the rebuttable presumption. So that way what
15 you're saying is if someone is employed less than five years they still have a
16 presumption. But in that instance it's rebuttable. So I would offer that as an amendment
17 to the amendment.

18
19 President Knapp,
20 So the friendly amendment modified to the underlying amendment offered by Council
21 Vice President Andrews, so that if, if I understand this correctly, there is a five-year
22 waiting period, if there is something identified in fewer than five years, then they would
23 have a rebuttable presumption. Have I captured that correctly? Okay. Councilmember
24 Elrich.

25
26 Councilmember Elrich,
27 This discussion reminds me about, A, why this country's healthcare system stinks, and
28 why, in general, the way we treat people who retire stinks. I mean, basically what we're
29 asking somebody to do is you could be dying of any of these listed cancers here, and
30 while you're fighting for your life, please fight against Montgomery County and
31 demonstrate that, in fact, we can't rebut that your cancer is caused by something that
32 you encountered in the workplace. That doesn't make me feel really good. And I
33 understand that this has -- may well have some limited financial consequences; I agree
34 with George's analysis that it's not going to be really serious if we do this. I think it
35 speaks to a much broader problem that we're trying to address. I just -- I cannot bring
36 myself to force somebody to have to go through that fight on top of the fight that they're
37 going to be engaged in over, you know, a very relatively small amount of money to us in
38 an area which is absolutely in precise. I mean, you might be able to rebut it, but your
39 rebuttal is going to be my evidence is stronger than your evidence, but not necessarily
40 conclusive. I highly doubt that you can prove conclusively that you didn't -- that nothing
41 you were exposed to in five years, four years, three years, or even one year, had this
42 affect on you. So much as I see the logic and I understand the concerns people have, I
43 just am not comfortable going that direction. So I'm not going to support the
44 amendment.



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1
2 President Knapp,
3 Okay, seeing no further discussion, we have before the amendment, which I just stated,
4 putting in place a five-year waiting period; if a disease is discovered before five years,
5 then there is a rebuttable presumption. All in support of the amendment as offered by
6 Council Vice President Andrews, indicate by raising your hand; Council Vice President
7 Andrews, Councilmember Berliner and Councilmember Praisner. All opposed;
8 Councilmember Elrich, Councilmember Trachtenberg, Councilmember Floreen,
9 Councilmember Leventhal, Councilmember Ervin and myself. Further discussion?
10 Further amendments? We now have before us Expedited Bill 8-08, Madam Clerk if you
11 would call the roll.
12
13 Council Clerk Crystal Brockington,
14 Mr. Elrich.
15
16 Councilmember Elrich,
17 Yes.
18
19 Council Clerk Crystal Brockington,
20 Mr. Praisner.
21
22 Councilmember Praisner,
23 No.
24
25 Council Clerk Crystal Brockington,
26 Ms. Trachtenberg.
27
28 Councilmember Trachtenberg,
29 Yes.
30
31 Council Clerk Crystal Brockington,
32 Ms. Floreen.
33
34 Councilmember Floreen,
35 Yes.
36
37 Council Clerk Crystal Brockington,
38 Mr. Leventhal.
39
40 Councilmember Leventhal,
41 Yes.
42
43 Council Clerk Crystal Brockington,
44 Ms. Ervin.



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Councilmember Ervin,
Yes.

Council Clerk Crystal Brockington,
Mr. Berliner.

Councilmember Berliner,
No.

Council Clerk Crystal Brockington,
Mr. Andrews.

Vice President Andrews,
No.

Council Clerk Crystal Brockington,
Mr. Knapp.

President Knapp,
Yes. Bill 8-08 is approved, 7-2. We now turn to Bill 13-08, Taxation - Arts and Entertainment District, Property Tax Credits. This was also deferred from last week pending some further information from the Executive Branch. Chair Trachtenberg.

Councilmember Trachtenberg,
Okay, thank you, President Knapp. Bill 13-08 would amend the law providing a property tax credit in arts and entertainment districts to conform basically to state law. The Bill clarifies that the credit only applies to the portion of a building that is used by a qualifying residing artist or arts and entertainment enterprise, but its primary purpose is to allow credits for new buildings as well as renovations consistent with the State enabling law, again as amended. The largest tax credit expected under this Bill, almost \$800,000 over 10 years, would apply Silver Spring Music Hall. And there were some questions last week during Council discussion, again questions posed by my colleagues, Councilmembers Elrich and Berliner. They wanted more information on financial analysis, again specific to the potential tax credit. I believe there's a memo from the Chief Administrative Officer Tim Firestine on circle 14 in response to the inquiry that was posed by both my colleagues last week. So the recommendation from the committee is simply to enact the Bill as introduced; no amendments.

President Knapp,
Very good. Is there is a requirement for further information or further discussion?
Councilmember Leventhal.

Councilmember Leventhal,



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1 Yeah, I just -- it does state it in the packet, but I do think it bears stating for the record
2 just to confirm for the benefit of those who may be watching at home that -- and the
3 Chair has stated and I'm just restating to make it very clear, that in the financial analysis
4 for this proposed music hall, this tax credit was calculated. Thank you.

5
6 Councilmember Trachtenberg,
7 Right, and that was the essence of what was being questioned last week.

8
9 President Knapp,
10 Okay. I see no further discussion. We have before us Bill 13-08, Taxation - Arts and
11 Entertainment District Property Tax Credits; Madam Clerk, if you would call the roll.

12
13 Council Clerk Crystal Brockington,
14 Mr. Elrich.

15
16 Councilmember Elrich,
17 Yes.

18
19 Council Clerk Crystal Brockington,
20 Mr. Praisner.

21
22 Councilmember Praisner,
23 Yes.

24
25 Council Clerk Crystal Brockington,
26 Ms. Trachtenberg.

27
28 Councilmember Trachtenberg,
29 Yes.

30
31 Council Clerk Crystal Brockington,
32 Ms. Floreen.

33
34 Councilmember Floreen,
35 Yes.

36
37 Council Clerk Crystal Brockington,
38 Mr. Leventhal.

39
40 Councilmember Leventhal,
41 Yes.

42
43 Council Clerk Crystal Brockington,
44 Ms. Ervin.



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Councilmember Ervin,
Yes.

Council Clerk Crystal Brockington,
Mr. Berliner.

Councilmember Berliner,
No.

Council Clerk Crystal Brockington,
Mr. Andrews.

Vice President Andrews,
Yes.

Council Clerk Crystal Brockington,
Mr. Knapp.

President Knapp,
Yes. Bill 13-08 passes 8-1. Thank you very much. We now turn to a briefing on the
Affordable Housing Task Force report, which is being led by, I believe, Ms. McMillan.

Linda McMillan,
[Inaudible] Mr. Nelson.

President Knapp,
Mr. Nelson. I would just state at the outset before we get into this, I appreciate the
efforts of our staff and the packet that's been put together. Affordable housing is not a
new issue and it's not a new discussion. And over this Council and the previous
Council, and I believe Councils before that there have been a number of requests, a
number of studies, a number of pieces of information that have been put together; and
Ms. McMillan has gone through and tried to compile at least those most recent pieces
for this packet so that we're not just looking at what the Affordable Housing Task Force
reports work has been, but also those issues that have been brought before us, so we
have before kind of a complete complement of information of that the Council has
requested or done over the course of the past few years. And so I think that's very
helpful, and I appreciate that. I would now turn to, I guess, Mr. Nelson to walk us
through the recommendation and introduce the folks in front of us.

Rick Nelson,
I'd like -- I'm Rick Nelson, Director of Housing and Community Affairs, and the Co-Chair
of Affordable Housing Task Force will begin this presentation, Ms. Goldberg-Goldman.



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1 Barbara Goldberg-Goldman,
2 Thank you. Along with Rick and to my left Scott Reilly, we are here today to present to
3 you what we believe to be an enormous step in the right direction to identify a
4 comprehensive and wise approach to alleviating and eradicating the affordable housing
5 crisis right here in Montgomery County. It really is a privilege to sit before you and I am
6 humbled. And while there may be just a couple of controversial recommendations in our
7 task force report, we are hopeful that you'll agree with the County Executive and accept
8 this document in its entirety. Some proposals will require legislative, while others
9 regulatory, and possibly administrative action. But all of them are well matched and
10 compatible working together, just as I hope we will do here now and in the future. On
11 July 14, the PHED Committee will begin an in-depth discussion and I look forward to
12 assisting you all if necessary. I have worked with each and every one of you in a variety
13 of capacities. I believe that I can say without qualification that there is no one sitting up
14 on your dais who does not agree that we're in an affordable housing crisis. We might
15 have some different ideas regarding the methods of how to alleviate and combat and
16 relieve it, but I do believe that we cannot permit the issue of affordable housing to be put
17 on a political crossfire. The ramifications of doing so will have detrimental effects on this
18 County as a whole. It continues to be a pleasure to be working with you, and I hope
19 from the bottom of my heart that we now will work as a strong team together and take
20 seriously the recommendations that you have before you today. As my former boss,
21 mentor and friend, Barbara Jordan, used to say to me all the time, we might have come
22 here in different ships but we're all in the same boat now. Well I believe that that's very
23 true when it comes to housing in our own community. When the County Executive
24 asked me to co-chair this task force, I was enthusiastic and I was challenged. But then
25 when I saw the list of all of the people, some 32 of them, that they had compiled to sit
26 on the group, I must admit, I had my doubts. How could we ever get anything
27 accomplished with so many people? Well I'm here to say that my reticence was quickly
28 abated. At no time did we have a meeting where there was not a majority or a full
29 attendance of the task force members. Each and every individual demonstrated
30 knowledge, commitment and a sheer desire to accomplish the task force goals of pulling
31 together the data, reasons, ideas, solutions, and yes, philosophical thoughts ultimately
32 to present to you today. There were healthy disagreements, discussions, debates, and
33 old and new cutting-edge ideas. We considered programs from every part of the
34 United States. Also the outpouring of responses that we received during and after our
35 community workshops gives us all reason to believe that we really are part of a very
36 well-built and sturdy team. DHCA staff was excellent often working well into the long
37 hours of the night to ensure that the task force members were equipped with all
38 necessary resources for each of the meetings and community workshops. They availed
39 themselves any time of day and evening through emails and the telephone. Talent and
40 willingness like this must be commended. And during the entire time we were meeting, I
41 had very early morning breakfasts, sometimes too early, with our beloved Marilyn
42 Praisner. We would go over the task force progress and recommendations. At no time
43 did we ever work in a vacuum. As we all know, Montgomery County is well known for its
44 cutting edge inclusionary (sic) zoning efforts with our MPDU program. But this is not



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1 nearly the panacea that many people thought it would continue to be back in the '70s.
2 We need to augment and expand our programs to better address our expanding diverse
3 population. We need to set high goals and we need to reach them. We believe that the
4 task force recommendations give our team the plays to do just that. I want to thank the
5 County Executive Ike Leggett, and the Director of DHCA, Rick Nelson, for giving me the
6 opportunity to be part of this great effort. And I want to thank the members of the task
7 force for giving tirelessly of themselves. This is one amazing group. One that I hope will
8 continue to work together to reach these goals. And along with me and Rick Nelson,
9 DHCA staff are here to respond to the questions that are contained in your packet. I
10 sincerely look forward to working with each and every one of you in this great and most
11 praise-worthy effort. So some background; County Executive Ike Leggett formed the
12 Affordable Housing Task Force by issuing Executive Order 8407 on February 28, 2007.
13 Recognizing the increasing lack of affordable housing and the crippling effects on
14 Montgomery County's residents, community, economy, he brought together a group of
15 representatives and individuals from all sectors of the County and region to form the
16 task force. Housing experts and advocates, representatives of the financial and
17 development industry, builders, housing providers, planners, community members, and
18 representatives of governmental departments and agencies all came together to
19 [inaudible] the issues and potential solutions. The task force adopted a report and
20 recommendations in November of 2007, and subsequently briefed the County Executive
21 on its progress. The County Executive felt strongly about vetting the recommendations
22 with the public through a series of community workshops. Six workshops were held, one
23 in each regional center and one in Rockville. The comments and ideas that were
24 collected at the work sessions appear in their own section of the report. Staff amended
25 the report and recommendations following the community meetings. A final report was
26 adopted by the task force in March, and the report and recommendations were released
27 by the County Executive on April 4, 2008, at the 2008 Affordable Housing Conference
28 Summit. The County Executive has adopted this report and recommendations in their
29 entirety. He will be developing implementation materials, be it Bills, Zoning Text
30 Amendments and policies, on each of the recommendations to discuss, go over and
31 work with you on them. He had begun implementing some recommendations already.
32 Actually, regarding the creation of the Short-Term Acquisition Fund, Mr. Leggett put in
33 his budget a \$25 million bond issue to support additional acquisition funding by the
34 Housing Initiative Fund. He plans to add another \$25 million next year. DHCA is in
35 negotiations now for the first use of the expanded fund for acquisition. And just since
36 January, and we'll make all of this available to you, I want to point out that in units
37 produced -- .

38
39 Rick Nelson,
40 Since July.

41
42 Barbara Goldberg-Goldman,
43 Oh, July, I'm sorry -- since July 2007 units produced 103 County-funded; in the pipeline
44 there are 294; and through MPDUs and rental agreements, 34. That means 431 units



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1 have been produced. In terms of units preserved, 34 that were County-funded; in the
2 pipeline 916; and at no-cost, meaning rental agreements or MPDUs, 291. Combined it's
3 a grand total of 1,672 units have been developed or preserved here in Montgomery
4 County since July of 2007. DHCA now makes comments in all Master Plans and Sector
5 Plans proposed by Park and Planning regarding the provision of affordable housing.
6 The Department requests that an affordable housing target be proposed in each plan.
7 The Department also now comments on the impact of ZTA's on the provision of
8 affordable housing. DHCA is drafting a Zoning Text Amendment to make accessory
9 apartments a by-right use in certain single-family zones. The ZTA is modeled after the
10 amendment proposed in 2004, but it will be tweaked to consider the additional
11 restrictive conditions discussed and proposed by the task force. An Executive Branch
12 task group has been meeting to develop a home-purchase assistance program for
13 public employees. Issues being discussed include eligibility, bargaining, bargaining unit
14 implications, taxability, timing and funding. Several proposed County facilities, including
15 the Silver Spring Library site, the Second and Third District Police Station projects, are
16 being reviewed for collateral development of affordable housing. I have a list of the 32
17 people who have been on our task force. Those people who were designated
18 committee members who sat in and contributed, and the staff. And I will submit that so
19 that you can see; and I want to thank you very, very much for being -- allowing me to be
20 part of your team.

21
22 Rick Nelson,

23 Before we get some questions, what I was going to do, Mr. President, is to in fact have
24 Scott and I quickly comment on the questions that the staff has identified -- raised in the
25 memo that you have. First question was the definition of affordable housing. The task
26 force, in talking about affordable housing, recognized that there are varying levels of
27 affordability and varying levels of need in the County. And in fact they have considered
28 everything from 120% of a [inaudible] median income down. The [inaudible] into 120%
29 of [inaudible] median income, at this point in the market, it is primarily an issue in terms
30 of sales housing. Loans in that range find it difficult to in fact purchase housing in the
31 County. Rental housing is generally within that range, so it's not as much of a focus.
32 The very low income is a significant portion of the population that we have to serve. And
33 the other thing that we've talked about and we've discussed with you and with the
34 PHED Committee is that we generally need some deeper assistance to get to those
35 people at the bottom of the ladder. But the task force affirmed that we need, as a policy
36 matter, to address all of those in those ranges of income in the County. There is a
37 question about a process in third-party administrator for the revolving property
38 acquisition fund. While that was included in the recommendation, the proposal that has
39 been put forward in the County Executive's budget was just to, in fact, float the \$25
40 million bond and to be administered by the County. That was for a couple of reasons;
41 one, is we were to take that other step setting up another organization and trying to
42 attract private capital, it would take more time to set up. The other factor that entered
43 into it at this point is that the economy right now has -- we've seen a drying up of some
44 of the resources out there that would in fact be contributed to this effort. But it is not -- it



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1 is something that we will be looking at and discussing further. It is something that we're
2 planning as far as the equity fund is concerned. Whether we do that kind of a structure
3 with the acquisition fund, we'll be determining that over the course of the next six
4 months or so. Another question that was asked is if the implementation timeline, which
5 have shows that works was underway regarding home purchase assistance for public
6 employees. The County Executive has in fact asked a task group of departmental
7 leaders to look at that issue to examine the issues and try to figure out what we can do.
8 And we are in the process of doing that. There are a number of issues that have been
9 identified; particularly some of the proposals that were raised by the task force will
10 require State Legislative changes. There are some bargaining issues in terms of some
11 programs that might be available for County employees. We are looking at other
12 alternatives to see what we can do. And we're also looking to see whether or not we
13 can match up something with the State program, House Keys, for employees that we've
14 had some discussions with you, Mr. Knapp, on. Those are things that the -- this working
15 group is looking at. We don't have any recommendations yet from the County
16 Executive, therefore we don't have any for the County Council. But it will be
17 forthcoming. Scott has a couple of the areas he wants to cover.

18
19 Scott Reilly,

20 For the record, Scott Reilly, Chief Operating Officer Department of Housing and
21 Community Affairs. There was a question about the annual housing production goals
22 that were developed as part of the housing policy that was adopted in July of 2001. And,
23 Mr. Andrews, I note that you are the sole remaining Councilmember still sitting on this
24 body that helped adopt that. Although one of your colleagues has moved across the
25 street, and I can promise you that Mr. Leggett continues his high level of interest in
26 affordable housing. We are going to be assembling a group of stakeholders involving
27 Executive Branch departments, public and private housing developers and providers,
28 nonprofits, advocates for housing, to review the goals that were developed in the 2001
29 housing policy, which you'll find on circle 102 of your packet today. Thanks to County
30 stat we're able to get a little better handle on exactly how the production has proceeded
31 year after year for use of Housing Initiative Funds and other County regulatory housing
32 programs. Because some projects are multiyear in nature, the counting of those has
33 always been a bit tricky, but I think we're coming to a resolution thanks to County stat in
34 being able to do that. And we're also able to tap into the information on how many
35 affordable housing units we're preserving without the use of County funds, which isn't
36 something that we had been tracking very carefully in the past. When we reach rental
37 agreements with private developers we can control for a period of years the affordability
38 of a certain percentage of the units in that development. It doesn't cost us anything but it
39 still retains the affordability for those units. So we're going to evaluating each of the
40 individual specific recommendations that we had in 2001; and that did get fairly detailed
41 as to how many senior units, how many federally-assisted units, how many units for
42 special population should be either preserved or constructed -- new construction. Look
43 at those. Evaluate where we have made good inroads into those needs, and reassess



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1 the needs to see if anything new is happening that we hadn't been able to address in
2 2001.

3
4 President Knapp,

5 Okay, there are a couple of questions. First, I just want to make sure I understood what
6 you -- first, thank you very much for the presentation and for coming to join us today.
7 Mr. Nelson, in your discussion, I think you said that we've basically gone from a task
8 force a workgroup?

9
10 Rick Nelson,

11 No, we just -- we have an Executive Branch group just looking at the issue of
12 implementing that particular recommendation. Because there was some legal issues
13 raised in terms of whether we in fact had the ability to abate taxes, for example. That
14 was one of the recommendations. This is not, in fact, something that we can do; that
15 requires State Legislation.

16
17 President Knapp,

18 Right. But we -- but for that one we already know -- we know we can move ahead with
19 the closing cost assistance programs, and we know that we can already leverage the
20 stuff from the State right now; don't we?

21
22 Rick Nelson,

23 Except leveraging from the State does in fact present the bargaining issues.

24
25 President Knapp,

26 Do we know that for sure?

27
28 Rick Nelson,

29 Yes, we do.

30
31 President Knapp,

32 Okay. So I guess the broader question I had is the Exec -- should we be expecting the
33 Executive to send over legislation for the elements of this? And in what timeframe
34 should we expect that?

35
36 Rick Nelson,

37 One of the things we tried to do, and there's a chart that you've been given that gives
38 some indication of when we're going to work on each one of these elements. And it
39 varies in terms of the timing. One part of it is related to the whole budget cycle so that
40 we can be prepared, for example, next year to have -- on the equity fund. That will be a
41 function and will be mentioned in the budget, so we want to have something by October
42 of next year. In terms of -- the first thing that we're working on, which we're currently
43 working on, is this question about a program for purchase assistance for public
44 employees. And we would expect that we should have something to recommend and to



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1 discuss with the Council by the fall on that particular issue. Other issues, as you will
2 look at the chart, we are working on some now, but there are others that we will be
3 working on beginning in October, some in January. It really is sort of a workload function
4 and, as I say, related to the whole budgeting process.

5
6 President Knapp,
7 Okay. Councilmember Floreen.

8
9 Councilmember Floreen,
10 Thank you. A couple of questions. And thanks for you work. I did attend a couple of your
11 sessions.

12
13 Barbara Goldberg-Goldman,
14 Yes, you did.

15
16 Councilmember Floreen,
17 I'm witness to the interesting commitment of a lot of people. This took what, a year --
18 about a year?

19
20 Barbara Goldberg-Goldman,
21 Yes.

22
23 Scott Reilly,
24 I think appointment was in -- very early in 2007. Release of the report in April of 2008.

25
26 Councilmember Floreen,
27 Yeah, about a year. And thank you for this report. And are you saying that now you're
28 going to go back and review the housing policy in the same way? Did I hear you say
29 that?

30
31 Scott Reilly,
32 We're going to review the annual production goals that were included in the 2001
33 Housing Policy.

34
35 Councilmember Floreen,
36 Okay, just those.

37
38 Scott Reilly,
39 That's correct.

40
41 Councilmember Floreen,
42 It's not like you're going to rewrite the whole thing.

43
44 Scott Reilly,



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1 No. That's right.

2
3 Councilmember Floreen,

4 Oh, thank you. I was thinking, well -- I assume you endorse the existing policy,
5 generally? Or is the task force report intended to overwrite that.

6
7 Rick Nelson,

8 I don't think there are any things in the existing -- in the task force report that conflict
9 with the adopted Housing Policy.

10
11 Scott Reilly,

12 I agree.

13
14 Rick Nelson,

15 The one reference, as Scott has mentioned, that the task force asked us to look -- go
16 back and look specifically at the unit estimates in terms of goals

17
18 Councilmember Floreen,

19 So then you're saying that basically the original Housing Policy -- the 2001, you're not
20 proposing that that be altered.

21
22 Scott Reilly,

23 The visions that you find -- .

24
25 Councilmember Floreen,

26 Other than the numbers.

27
28 Rick Nelson,

29 But to the extent that it didn't cover some of the things we've mentioned here; it's really
30 supplemented by -- for instance, the Housing Policy 2001 did not, in fact, recommend a
31 non-residential impact fee; this does. So this is, in fact, a supplement to what already
32 exists in terms of housing policy.

33
34 Councilmember Floreen,

35 So this is a supplement to the existing.

36
37 Scott Reilly,

38 Right. If I could -- .

39
40 Councilmember Floreen,

41 They could be viewed in concert. I'm just trying to understand where we all are on this.
42 Do we have -- are we -- should we be awaiting a new Housing Policy from this group?
43 Are you going to weave them together? I mean, when people -- when we have our
44 conversations about all this, can we say well that's -- that's the source, or not?



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1
2 Scott Reilly,

3 The Housing Policy is exactly what it is, it's a policy document. The task force report
4 and recommendations go to establish a true box of ways to implement what we've been
5 doing. It's a much more hands-on implementing document than the Housing Policy had
6 been. So that's why you're going to be seeing specific recommendations coming from
7 the County Executive accompanied by Legislation, Zoning Text Amendments, funding
8 initiatives, things like that.

9
10 Councilmember Floreen,

11 Well, there were quite a lot of specific recommendations there as well. Okay. Well,
12 anyway, so you're saying there -- you looked at together?

13
14 Scott Reilly,
15 Yes.

16
17 Councilmember Floreen,

18 I had a question about Barbara's reference to the numbers of units and so forth.
19 Barbara, were you referring to the chart sort of on page 3 and 4 of the staff -- ?

20
21 Barbara Goldberg-Goldman,

22 No, it's an extra page, and we're going to make that available to you.

23
24 Councilmember Floreen,

25 I just observe, you know, there are many projects that have been in the pipeline for a
26 number of years. And while I appreciate the fact that the Housing Initiative Fund has
27 supported certain projects, it can't claim credit for them all. Most of them, if not all of
28 them, are privately driven; not all of them, but most of them at least on the staff memo
29 were driven by a variety of private-sector initiatives; not the County. So I would make
30 that point. And I'd like to see your chart. But, you know, thinks like -- and I go all this
31 stuff. I've participated in much of this, certainly Habitat initiated its work on its own.
32 Rebuilding Together solicits community support and goes out and helps people stay in
33 their homes. But it actually doesn't ensure in the long run that that unit will stay
34 affordable. There's no control. It's, you know, it's a great program. But I guess I would
35 like to talk to you at some point about how we define the term affordability.

36
37 Rick Nelson,

38 But let me also say, I mean, you said, for example, that Habitat has done it, but we've
39 contributed a million dollars.

40
41 Councilmember Floreen,

42 Yeah.

43
44 Rick Nelson,



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1 That's all we're saying is -- .

2
3 Councilmember Floreen,
4 I'm just saying these are partnerships.

5
6 Rick Nelson,
7 Oh, there's no question about it.

8
9 Barbara Goldberg-Goldman,
10 We're all part of the same team. And not to be would be working across purposes to
11 one another. But when we talk about County funded it means that County money is
12 going into these projects, and therefore we are preserving and building them as well. It
13 couldn't be done without our assistance.

14
15 Rick Nelson,
16 Let me also say -- and this goes to Scott mentioned County stat. One of the things we're
17 trying to do with the statistics is to have a clear picture of what we're doing. And that's
18 why we've separated out units in terms of produced and preserved, because there is a
19 whole production side. And then we've separated out stuff that we put money into and
20 things that we don't put money into. And trying to be clear so that we don't sort of
21 double count. There's stuff that we're involved in over a two-year period. We don't count
22 those as produced in two different years. And we're just trying -- .

23
24 Councilmember Floreen,
25 All those things are good concerns. But I am concerned when I see long-term projects,
26 you know, we're keeping them alive and that's a good thing. But it's a little different from
27 say identifying them as new projects in certain years. So again it's a bookkeeping issue.
28 I would like you -- well, I wanted to alert you to the fact, I know one of the
29 recommendations has to do with parking policy. We're going to be taking that up in July
30 in the T&E Committee. Mr. Elrich is very interested in that and so am I. And it's no so
31 much in the housing context but in the overall, Mr. Knapp has that issue with respect to
32 other kinds of vehicles. But the whole issue of parking is something that we will be -- .

33
34 Barbara Goldberg-Goldman,
35 As you know, that was one of the ones that was the -- .

36
37 Councilmember Floreen,
38 Cost driver.

39
40 Barbara Goldberg-Goldman,
41 Healthy discussion and debate. And I believe that in the end there was some
42 unanimous feeling that it needs to be addressed. It needs to be discussed further. But
43 they're good arguments for the reduction. And hopefully we'll work with you together in
44 getting it done.



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1
2 Rick Nelson,

3 So I guess that means that the chart already has changed since we had put that on the
4 list to begin working on -- on our recommendations for January, I guess we'll have to
5 move up -- move that item up on our agenda.

6
7 Barbara Goldberg-Goldman,
8 Which is good.

9
10 Councilmember Floreen,
11 I got to say folks, times a wasting. Every last one of these. And we actually need you up
12 front and center advocating for the hard decisions that we've got to make on a regular
13 basis; which was not the case most recently.

14
15 Rick Nelson,
16 We'll be here.

17
18 Councilmember Floreen,
19 Which makes it difficult for us, frankly. If County policy is an up front and center -- if
20 County leaders are not up front on hard decisions that involve community issues, you
21 know, this is nothing but another report that we can add to our roomful of reports on
22 affordable housing, and take credit for stuff we've been doing for years and not come up
23 with any new ideas. So let me just say I'm skeptical of this -- of the commitment to this
24 initiative. I'm not skeptical of the goodwill and good intentions, but the delivery side, I
25 think, we're weak on. And I wanted to throw up -- out another issue for you to give some
26 thought to. I am wondering if we shouldn't be focusing way more on the production and
27 preservation of rental units, as opposed to homeownership. This is a national issue, and
28 I think it's also a local issue. You know, this is a -- ownership is the way you own a piece
29 of the American dream. But I wonder if we can really afford to prioritize that as much as
30 we've done recently, because of the challenges of just getting housing accessible to
31 people. And I am very concerned about whether we can do as much as we think we've
32 bitten off.

33
34 Barbara Goldberg-Goldman,
35 You must have read Paul Krogman's piece in the New York Times [inaudible] -- .

36
37 Councilmember Floreen,
38 I think I did.

39
40 Barbara Goldberg-Goldman,
41 Which is his whole thrust.

42
43 Councilmember Floreen,



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1 I think I did, but just general -- it certainly started me thinking about how we prioritize the
2 use of scarce fiscal resources. On the list of projects that's on our staff list at least, a
3 certain number of those are rental. But at least with rental units you can control when
4 we put County money into projects we can control the long-term, and I mean more than
5 10 years worth or even 30 years worth of accessibility for our people. With
6 homeownership it's a whole different deal. I can't recommend it to anyone that it's worth
7 their while to buy an MPDU, frankly, because that takes a lot of resources to put
8 together to get engaged, and you really don't see the fiscal benefit, assuming this
9 housing situation turns around in a short time -- in a year or two. You don't get the
10 return on your investment that you could if you were operating on your own in the
11 private sector because of governmental controls. And so I just throw out the issue. I
12 don't know the answer. But I think it's a conversation that we should start talking about
13 in terms of just access to a roof over one's head, because that is a tremendous
14 challenge. The accessory apartment issue, if it can actually work, would be the single
15 most useful tool at no cost to the County that would provide affordable rental housing
16 spread throughout the community in a way that -- assuming that one could overcome
17 community suspicion of such a thing -- would be the single most important way, I think,
18 of creating a great dispersal of folks of different incomes throughout Montgomery
19 County. We'll see. It was looked at previously and got, you know, got -- had issues and
20 folks withdrew then. I think it's certainly one that we should give some high priority to.
21 But I know there are lots of communities who view that as very threatening. But at least
22 that's rental and so it bears a certain amount -- it provides a certain amount of
23 accessibility to people who otherwise are looking at living in places that require
24 significant transportation support and significant County support elsewhere. This would
25 be, I think, a very fiscally careful initiative that's worth giving significant attention to. And
26 I hope we'll see how that one goes. I'm glad you have it on your list. But I do raise the
27 question of focusing on rents versus homeownership. I just ask you to, you know, keep
28 it in the back of your minds. Maybe we'll talk about that in committee when we discuss it
29 in a couple of weeks, generally, to look at what's the best use of our money.

30
31 Linda McMillan,

32 And you did discuss that when you approved the acquisition fund. And, in fact, we did
33 put some language in the PDF because you had a discussion in PHED Committee that
34 you shared with the Council about a priority for acquisition of rental.

35
36 Councilmember Floreen,
37 Sure.

38
39 Rick Nelson,

40 There's no question about that rental will receive attention during FY09. In fact, the
41 projects that we are thinking about in terms of new projects, we've got Silver Spring
42 Library site. It's going to be rental housing. The site that we want to put in conjunction
43 with Third District Police station will be rental. A site that we're considering in terms of
44 preservation for multifamily is rental. At this point we don't have any sales stuff that



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1 we're considering for FY09. So it's clear that rental will -- we had -- because of
2 opportunity we had some focus on some sales in FY08. But I concur with you in terms
3 of the attention to rental, and I think that's where we will put the resources in FY09.

4
5 Councilmember Floreen,
6 Well that's good to know, and I'd like to keep talking with you about how we address it.
7 And then it avoids the condo fee issue, the HOA fee issue, and all those costs that
8 otherwise we have to figure out how to subsidize or to find some elaborate alternative to
9 -- nobody really likes.

10
11 Rick Nelson,
12 I do have to take issue with your statement about not recommending MPDU sales as a
13 viable option. I think -- .

14
15 Councilmember Floreen,
16 That's me. Maybe not you.

17
18 Rick Nelson,
19 I just think -- .

20
21 Councilmember Floreen,
22 Someone comes to me and says -- .

23
24 Rick Nelson,
25 You know, the opportunity for somebody who can afford it to get into homeownership,
26 albeit they can't have the same level of appreciation as the rest of us; that is a major
27 step in their lives. And I think that's what the MPDU program has provided that
28 opportunity for. But we also do need and have assistance for rental programs.

29
30 Councilmember Floreen,
31 Well, we'll keep talking.

32
33 Barbara Goldberg-Goldman,
34 And I would also hope that your feelings will dissipate about not being certain that this
35 report is going to come to fruition in terms of tangible outcome. I have never been
36 involved in something that sat on a shelf and collected dust, and I will do everything I
37 can that is humanly possible for me to make sure that does not happen with this
38 document.

39
40 Councilmember Floreen,
41 Well then you weren't here for the last report because that's what it's done.

42
43 Barbara Goldberg-Goldman,
44 But it wasn't mine.



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Councilmember Floreen,

There you go. Okay, Barbara, well, I do look to all 32 members of this group to come out and beat the bushes for all your recommendations, including the accessory apartment initiative. Because that's going to be a hard one. And the extent of widespread community support for that is going to have to be very evident and it's going to have to come from the Executive Branch. It's going to have come from the County Executive if this is the County Executive's interest, and it's going to have to come from every member of this committee.

Barbara Goldberg-Goldman,

Well, I would say that it's more than the County Executive's interest. I think he has made it very clear to us on a number of occasions that this is of highest priority to him. And in our meeting with him just a while ago, he was very adamant about taking the lead and forming a team to make this work.

Councilmember Floreen,

Great. Thank you.

President Knapp,

Councilmember Ervin.

Councilmember Ervin,

Thank you very much. Thank you for all your hard work. I want to associate my remarks that I'm going to make here with what Councilmember Floreen just sort of laid out. She laid out a lot, but I'm just going to pick a few things out. And I think the report is really well done, and I want to thank Council staff, Linda McMillan, for always doing a fantastic job just putting out for us what we need to look at. A couple of things -- I know in Montgomery County we're very proud of our sort of progressiveness, and we always want to get behind ideas and issues that, you know, are important to most people, except for when it's time for them to occur. And so I've been very frustrated for the past nineteen months as I've sat on this Council and witnessed time after time after time that this body has not really had the political will to move forward on a lot of the promises regarding affordable housing. And for me I represent District 5, and there are some projects that are sort of getting lined up right now that will result in workforce housing, rental units and affordable housing. And I can tell you right now that it will probably not be the will of this body to move some of those -- to vote to move some of those projects forward. There are some ZTAs coming to us, and some other projects that I believe would be important for us to move forward in Silver Spring and Wheaton. So as I look through your document, you know, I was very glad to see some of the outcomes. And one of the ones that I was most interested in is the technical paper number 4 on page 57, which is the create a more attractive planning and economic environment, to me was a key piece of the report. In terms of how we get there, I'm looking at the current situation that you all have outlined for us, and it's dead-on in terms of what's happening.



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1 It seems to me that we just have to get started and get it built before we can do much
2 else. And so my frustration is in that we say all the right things but it really is about in the
3 doing. And so I'm really hoping that in conjunction with the Affordable Housing Task
4 Force, the Executive Branch and the Council that we can really get started in the doing.
5 The other thing that I'm most concerned about is community buy-in. I mean, we can't
6 legislate community buy-in, but it's clear that there are neighborhoods that are
7 especially close into the infill development. And I have a lot of empathy for them
8 because I live in one in the downtown area of Silver Spring. But how we approach our
9 community, our neighbors about what affordable housing is and why it's not to be -- they
10 shouldn't be fearful of it because change is scary to people. Change means everything
11 from density to what the neighbors are going to look like. And so we really have a lot of
12 very difficult work ahead of us. I was recently -- and I swore I would never do this, but I
13 started reading some blogs -- some neighborhood blogs. I was like -- the hair stood up
14 on my arms when I read some of the comments about keeping certain people out of the
15 neighborhood. When I've looked on some civic associations -- not their websites, but if
16 you go and you look at some of their rules -- no -- the documents that they have for
17 rules, it's almost like there is still covenants that exist in the County through civic
18 organization's bylaws; shocking about who can be members and who can't be
19 members. And so, you know, there are a lot of things just, you know, bubbling up
20 underneath the surface. It's uncomfortable for us to talk about it, but it's there. And the
21 way we proceed forward into the future about this real conversation about do we want
22 affordable housing in Montgomery County or is it just a nice thing for us to say. And I'll
23 stop with one more point, and that is I heard the other night a gentleman, who was
24 receiving an award, talk about affordable housing and the people that will be served by
25 the housing; they don't live here because they work here. For example, we learned this
26 during budget, 42% of all Montgomery County teachers live outside the County. They
27 live in Frederick County or Howard County, or they live in West Virginia. They travel great
28 distances to come into the County. Those folks who should be our constituents are not
29 our constituents. Those are the people we need to be talking to because they're the
30 ones that need the housing. So I just think it's been a very good exercise. And like my
31 colleague, Nancy Floreen said, we hope this doesn't gather dust on a shelf somewhere,
32 because this is the hard work of the Council and the hard work of the Executive, and all
33 of you who have spent so much time and energy and effort and goodwill to present to
34 us this report. I thank you very much for it, so let's hopefully at this point we'll roll up our
35 sleeves and really do some of what's in the report.

36
37 Rick Nelson,

38 If I can just point out item number -- issue number 4 on the task force report, goes to
39 your last issue in terms of community acceptance. The task force spent a lot of time
40 recognizing that, in fact, there isn't as much general community acceptance, community
41 not just being neighborhoods, but being the business community, entire community, and
42 encouraging us to, in fact, start a campaign to education folks about housing and
43 affordable housing. Not just the individual projects but trying to get more active support
44 rather than just people nodding their heads saying yes; get out there and do something,



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1 put something into it. Be it employers as part of employer-resistant housing. But really
2 generating some real support for affordable housing to make things easier and hopefully
3 reduce some of the invective that you read in those blogs.

4
5 President Knapp,
6 Councilmember Berliner.

7
8 Councilmember Berliner,
9 Barbara, I want to thank you for your leadership in this work for many years, and just
10 your real commitment to it. I have been an advocate of using our "publicly-owned sites"
11 and I appreciate your focus with respect to that. And my hope is, for example, we have
12 a police station in Bethesda that has not gone out for an RFP, and quite frankly I don't
13 recall whether or not affordable housing was an explicit component with respect to that.
14 And I'm glad to hear it was. But my hope is that those are the kinds of opportunities that
15 we seize upon. Here's this great site, underutilized site that needs to be redeveloped,
16 and could be with affordable housing right there on Wisconsin Avenue. And we own it.
17 So all of the economic issues associated with our MPDU problems and the incentives
18 that -- they're not present. So I do -- I'm glad to see you're focused. And my hope would
19 be that any time any of our public land -- publicly-owned lands are going out for RFP's
20 that they automatically include a request for exploration with respect to affordable
21 housing. I believe that we ought to be looking at this at libraries. I've explored that in the
22 context of Silver Spring. But there are a number of older libraries that sit on these sites
23 that are ideal for co-locating at least workforce housing, if not moderately priced
24 housing, if not, you know, a whole -- you could just add three or four floors. And I think
25 there are lots of places where communities would have no problem with that. So to me
26 our objective ought to be able -- our first to be to focus on that which we control and see
27 whether it is suitable. So I urge you to -- I'm grateful for your focus on it here, and look
28 forward to seeing it move forward.

29
30 President Knapp,
31 Councilmember Andrews.

32
33 Vice President Andrews,
34 Thank you, President Knapp. Well Scott Reilly mentioned I was the only
35 Councilmember still here from 2001, and you're making me feel old. But I should go
36 back even further -- 1998, and I remember last century -- last millennium, and I
37 remember that when in 1999 the Housing Initiative Fund was about \$2.5 million and
38 now were up to 54 million. So there has been a lot more money put into it over the years
39 to assist in affordable housing. There is a useful page -- a lot of useful pages, I think,
40 and one of them is circle 42 in the packet that has some -- indicates some progress on
41 County-owned sites, which my colleague, Roger Berliner, mentioned. And the Third
42 District Police station is planned to have affordable housing as part of its site, I think 8
43 acres of the 12. You mentioned -- it's listed here there are two sites that are in Rockville;
44 one is the Fleet Street site, which is right to our left here, which will be 80 units of new



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1 senior housing. It says approval is being negotiated with the city of Rockville. Victory
2 Housing has been selected as the developer. Development financing package is being
3 negotiated. What's the timeline on that?

4
5 Rick Nelson,

6 They are literally having discussion through the Planning Commission. I mean, it --
7 we're hoping to get under construction end of the year -- if we can by the end of the
8 year. I mean, it's in active -- it's not just discussion, I mean, they're actively developing
9 it, they just haven't dug the dirt yet.

10
11 Vice President Andrews,

12 Okay. Well that's coming up pretty soon then. And then it says, and I remember this --
13 King Farm Department of Housing and Community Affairs assisted HOC in purchase of
14 49 two- and three-bedroom apartments, which will sell as condominiums in the
15 programs similar to the workforce housing program. And what's the status of that?

16
17 Rick Nelson,

18 HOC has just let a contract to a firm to begin the sales effort for those units. So they will
19 be put for sale and hoping over the next six months that they'll get sold.

20
21 Vice President Andrews,

22 Okay. All right. And there are a few other issues listed here [inaudible] site. So there's a
23 -- here's my point, there is a lot going on, and it's a lot of moving parts, but I think we
24 are making progress in terms of seeing some projects actually go forward. And we
25 certainly provided a lot more money to help leverage additional private and public
26 dollars to have that in place when the opportunity presents itself. Thanks.

27
28 President Knapp,

29 Thank you everybody for your comments. I guess I would also just look at the sense of
30 urgency. I guess the soonest then we're kind of working on is the development
31 implement community support campaign, which is supposed to be I September. So
32 does that mean we have -- we should be expecting some time in the next two months
33 the development of the campaign that we would see a kickoff of?

34
35 Rick Nelson,

36 No.

37
38 President Knapp,

39 Is that when we actually start putting people together to start talking about [inaudible].

40
41 Rick Nelson,

42 I think actually we're talk -- we were think about going -- probably going out with an RF -
43 - beginning the process of discussion with different folks both up here and in the
44 Executive Branch, developing an RFP to get a campaign. And, again, part of the reason



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1 for timing on that is that we were anticipating that as a busy schedule with the PHED
2 Committee over the course of the next few weeks. And there are other things that we're
3 trying to get done. So that's why it was put off until September.

4
5 President Knapp,

6 Well and it just dawned on me that we were talking about the closing cost assistance
7 programs, and it was a -- if we do in fact believe it's something that's a negotiable item
8 was actually included in last year's budget. And we just spent the last three weeks going
9 through all of the various contractual elements because we've renegotiated portions of
10 at least three different contracts, and all of the ones for County Governments, and this
11 wasn't an item that was negotiated in any of them to my knowledge.

12
13 Rick Nelson,

14 That is correct.

15
16 President Knapp,

17 So, on the one hand we stuff that's out there that we can do that have and it's what's
18 urgent, we should get to it. On the other hand, we actually have contracts in front of us
19 and we're not doing anything with them.

20
21 Rick Nelson,

22 The closing cost assistance program is still available to County employees.

23
24 President Knapp,

25 We could leverage -- get twice as much money for it, but the reason we said we haven't
26 proceeded with it is because we don't have the resource -- we don't have -- we have to
27 negotiate the contract to do it. We had the direction in last year's budget to do that.
28 Negotiated contracts have now come and gone and there was nothing in any of them.
29 I'm just saying that on the one hand we're saying had a high level of urgency to get
30 these things done, on the other hand we had stuff in front of us that we could have been
31 doing that we just didn't do.

32
33 Rick Nelson,

34 What I have to say is as far as the task force report was concerned in terms of focusing
35 on County employees that did not come out in sufficient time, I don't think, to impact the
36 negotiations. I'm also not clear because I wasn't privy to that, all of the issues that were
37 on the table and/or possible to be on the table at that time.

38
39 President Knapp,

40 Did your office forward this as an [inaudible]?

41
42 Rick Nelson,

43 Pardon me?



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1 President Knapp,
2 Did your office forward this as an issue that should be on the table?
3

4 Rick Nelson,
5 It's an issue that was discussed within the Executive Branch.
6

7 President Knapp,
8 Okay, I just as -- I just -- .
9

10 Rick Nelson,
11 No, I understand your point. And all I can say is that it was not an issue that ended up
12 being discussed.
13

14 President Knapp,
15 Okay. And I appreciate -- I don't disagree with the intent and the people want to do good
16 things; I think when the opportunities present themselves we actually have to do good
17 things. And so I think that's where there's a little skepticism that's out there. I don't -- no
18 doubt that we want to. We just actually have to do it. So anyway, okay. This will set the
19 stage for our discussions over the course of July. And I think there's a lot of focus on
20 affordable housing, and we look forward to working with all of you very closely to get
21 there.
22

23 Barbara Goldberg-Goldman,
24 Thank you very, very much.
25

26 Rick Nelson,
27 Thank you, and thank the Council for the support, including the \$54 million that you
28 gave to the Housing Initiative Fund this year. But more than that really the -- despite the
29 fact that we have some issues maybe between us, I think that we have a good
30 cooperative working relationship and I hope that we continue to build on that and have
31 more success.
32

33 President Knapp,
34 Let's do it.
35

36 Barbara Goldberg-Goldman,
37 And you have at least 32 people at your door to make sure that this goes. We're all on
38 the same page.
39

40 President Knapp,
41 Good, because we'll have lots of discussion [inaudible].
42

43 Vice President Andrews,



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1 Let me just mention real quick that HOC has just opened its customer service center in
2 Gaithersburg last week or so, and make it much more convenient.

3
4 President Knapp,
5 They had people in line as soon as the doors were opened.

6
7 Vice President Andrews,
8 There we go, so it's up and running.

9
10 President Knapp,
11 Excellent. Thank you. All right we are in recess until -- let's go -- yeah, we've got to go
12 1:30 because we've actually got a lot of stuff this afternoon; okay, 1:30 folks.
13



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1 Council President Knapp,
2 Good afternoon ladies and gentlemen. This is a public hearing on Proposed Charter
3 Amendments and recommendations of the Charter Review Commission. Persons
4 wishing to submit additional material for the Council's consideration should do so before
5 the close of business on July 1, 2008 so that individual views can be included in the
6 material which staff will prepare for Council consideration. The Council worksession is
7 tentatively scheduled for July 8, 2008. Please call 240-777-7900 for information. Before
8 beginning your presentation please state your name clearly for the record. I believe we
9 have no speakers for this hearing. This concludes this public hearing. Good afternoon
10 ladies and gentlemen this is a public hearing on Amendment to the Ten-Year
11 Comprehensive Water Supply and Sewerage Systems Plan: deferred water and sewer
12 category change request for Bryanshire Corp (for God Glorified Church of God in
13 Christ). Persons wishing to submit additional material for the Council's consideration
14 should do so before the close of business on June 27, 2008 so that individual views can
15 be included in the material which staff will prepare for Council consideration. A T&E
16 Committee worksession is tentatively scheduled for July 7, 2008 at 9:30 a.m. Please
17 call 240-777-7900 for information. Before beginning your presentation please state your
18 name clearly for the record. We have five speakers. Phil Mitchell representing the
19 Bryanshire Corporation, Quentin Remein, Cloverly Civic Association, Paula Nerret as an
20 individual, Edward Purich as an individual and, I'm going to butcher this one, Avgerinos
21 Vakalopoulos as an individual. And you can come tell me how I did that wrong. Please
22 come join us. Mr. Mitchell is our first speaker.

23
24 Phillip Mitchell,
25 I'm Phillip Mitchell for Bryanshire Corporation. P.O. Box 10, Cabin John, Maryland
26 20818. Hi, I'm Phillip Mitchell with Bryanshire Corporation. The private PIF presently in
27 Silver Spring needs a larger facility which is presently leasing and looking for a
28 permanent home. As a result of the T&E meeting of June 28, '07 the requested concept
29 plan was produced by McCrease and Hendricks. This scale concept plan reflects the
30 requested 25% impervious of the site. This concept plan shows the building and parking
31 largest case scenario as directed by the T&E Committee. The site is 8.61 acres and the
32 layout shows the building and parking only on 2.2 acres. The PIF naturally would like to
33 know what the maximum building they could build on this site in order to accommodate
34 their growing congregation. As per the T&E Committee request, we have submitted this
35 attached concept plan in accordance to their request and totally keeping in with the
36 other recently approved PIF's in the area. Thank you for your time and attention.

37
38 Council President Knapp,
39 Thank you very much. Our next speaker is Mr. Remein.

40
41 Councilmember Floreen,
42 Press your button there.

43
44 Council President Knapp,



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1 There you go.

2
3 Quentin Remein,
4 I'm sorry.

5
6 Council President Knapp,
7 Excellent.

8
9 Quentin Remein,

10 I'm Quentin Remein, I'm President of the Cloverly Civic Association. If you turn to the
11 handout that I gave you, and particularly the pictures, you can follow through looking at
12 the pictures and get more out of this and the text is nice and you can read that later.
13 Basically, I wanted to first point out that we have a lot of churches on New Hampshire
14 Avenue and Cloverly Center area, and just going down the list here, the top of the, the
15 first church has not been built but there is a church scheduled, a Pentecostal Church of
16 God scheduled to be there. The second church is a church that's already there. The
17 picture is on the top of the page. It's the Christ Fellowship Church. Then there is a
18 Korean Presbyterian church that has not been built, number three. Number 4 is St.
19 Andrews which is the most recent church built. Most recently approved. And all the ones
20 in red have been given water and septic by category change. And also People's Baptist
21 Church, number five. Number 6, the one south of Norwood Road don't require special
22 approval since they're in the RE-2 zone, but we had Heritage Church, the Muslim
23 center, and the Greek orthodox church. This is a small number of the churches that are
24 Cloverly. I could have listed probably 100 churches that are in our area. This particular
25 one, I'd like to, the people who are here from Cloverly, if they could just stand up a
26 minute to indicate that they are here and they are interested. This is one is especially of
27 concern to us because it is being built on a residential road. All these churches here are
28 built on major highways, except this one is going to have its frontage on Bryant's
29 Nursery Road, a small rustic community road. The second thing is that this property
30 would not be buildable if it wasn't given sewer and water by the Council in this particular
31 hearing. All the other churches that have been granted it could have had their own
32 septic systems and could have had their own well systems. But in the interest of the
33 environment, they chose not to go this direction. We are really, we support the
34 churches. We have supported the special, with the exceptional use by granting them
35 water sewer category changes. We support a lot of churches. Starting out 25 years ago
36 we supported Emmanuel's Church which I think you've all heard of. We supported
37 People's Baptist Church, St. Andrews, we've even encouraged some of these churches.
38 It is not a case of we don't want it in our backyard. It is a case, right now this church is
39 just, this is too much. If you just, I have, we have a problem in Cloverly. If you turn to the
40 next picture here we have a number of churches and there's two examples here of
41 churches that are being built in the community. Then there is a number of churches that
42 have been built on New Hampshire Avenue that are in existing homes along New
43 Hampshire Avenue. The third thing is an overview of the two properties. I'd just like to
44 point out that these two properties are the headwaters of the two forks of Bryant's Run.



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1
2 Council President Knapp,
3 Okay. You'll have to wrap up.

4
5 Quentin Remein,
6 Okay. Building a church on either one of these properties is really going to destroy the
7 headwaters. And if you would like to ask me more, I would be glad to briefly explain to
8 you.

9
10 Council President Knapp,
11 Thank you for the opportunity.

12
13 Quentin Remein,
14 Why that is really important.

15
16 Council President Knapp,
17 Thank you. We have your testimony.

18
19 Quentin Remein,
20 And how it is important to the bay.

21
22 Council President Knapp,
23 Okay. Ms. Nerret.

24
25 Paula Nerret,
26 Good afternoon members of the County Council and others present today. My name is
27 Paula Nerret. I reside at 621 Bryant's Nursery Road, Silver Spring, Maryland. I'm here
28 today to explain why the request for a category change for water and sewer by the
29 Bryanshire Corp should be denied. I have a great deal of history connected to this
30 parcel owned originally by Mr. Paul Golgen. My husband and I bought a lot and home
31 from Mr. Golgen in 1983 when he was developing 26 lots adjacent to the parcel now
32 owned by Bryanshire Corp. I subsequently worked for Mr. Golgen selling some of the
33 lots. The parcel owned by Mr. Golgen remained undeveloped and there was no
34 indication that there was any intent of anything being built as I had always been under
35 the impression that the parcel did not perk at the time of the original subdivision and
36 thus was unbuildable as RE-2 does not normally allow for public water or sewer. I was a
37 member of the 1997 Cloverly Master Plan Citizens Advisory Committee from late 1995
38 to 1997. One of the important points in the master plan is the designation of Bryant's
39 Nursery Road as a rustic road. The definition of a rustic road as stated in the rustic
40 roads master plan is as follows: and I quote. Rustic roads are roads in the agriculture
41 reserve or rural parts of Montgomery County which exemplify the rural and agricultural
42 character of the area, end quote. The master plan is very clear in stating that Bryant's
43 Nursery Road fits the rural characteristics and therefore was named one of the few
44 rustic roads in eastern Montgomery County. The water main in Bryant's Nursery Road



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1 was built in a limited manner to correct an ongoing severe health hazard caused by
2 MTBE contamination to wells on the street. The water category was changed to allow
3 for possible public water for houses that were deemed to have unpotable water and the
4 rest of Bryant's Grove was included to be consistent for any future changes in wells.
5 The sewer category was kept at S6 as is appropriate for RE-2 zoning. There was no
6 intent that public water was brought in to encourage or allow development of any land in
7 a way that RE-2 does not allow. Certainly a 40,000 square foot institutional building and
8 parking lot for over 200 cars is not the intent of low density zoning on a designated
9 rustic road. It appears that Bryanshire Corp is trying to take advantage of a water main
10 that was built to alleviate a health hazard in the community. The master plan clearly
11 states, and I quote, the RE-2 zoned area bordered by Norwood Road, Northwest
12 Branch, Hampshire Greens, and New Hampshire Avenue is not recommend for sewer
13 service. This recommendation is designed to maintain the rural character that results
14 from low density residential development that in turn relies on septic suitability of soils to
15 determine the location and number of houses. This plan recognizes that development
16 on individual properties in the RC zone and the RE-2 zone may be limited due to the
17 lack of public sewage service. A presence of public water service does not justify the
18 extension of sewer service in the RE-2 and RC zones, end quote. I urge you to consider
19 carefully that Bryant's Nursery Road is not a road meant for large institutional buildings.
20 It is a beautiful rustic road of homes on rural lots. There are some old and some new.
21 But all are compatible with our carefully crafted master plan. Please don't destroy what
22 we have helped to create and maintain. Thank you for your time.

23
24 Council President Knapp,
25 Thank you very much. Mr. Purich.

26
27 Edward Purich,
28 It's Dr. Purich.

29
30 Council President Knapp,
31 Dr. Purich, sorry.

32
33 Edward Purich,
34 I'm a resident of the Cloverly area for 30 years, 1978 is when I moved into the area. I
35 live approximately 500 feet, my property from the, where the church is to come. Cloverly
36 Association has been associated with the Cloverly master plan where kind of basically
37 the nucleus and over the years with the master plan and all the work that was involved
38 in developing that plan, I had in one way or another, observed or participated in some
39 way, although I was not part of it, directly. First, on second page of the handout that
40 Quentin gave is the master plan issues. First of all, I'd like to unequivocally say that we
41 are against granting this sewer. I'm against it. To grant the sewer water management
42 exception for the church. It's not that the Cloverly Association or the people of our area
43 are against churches. It clearly could be demonstrated by New Hampshire Avenue
44 development that we have supported churches. It's the access. This is a 4-acre lot. Is



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1 that 3 minutes? Please look at this. It wasn't three, it went prematurely. I see. Do I get
2 10 seconds to cycle up again?

3
4 Council President Knapp,
5 Go ahead.

6
7 Edward Purich,
8 Okay. The master plan issues that we have here is that we are using the Cloverly
9 master plan was set up with RE-2 zoning of that particular area. And we used sewer as
10 the method for restricting access to extensive development. So by you giving an
11 exception in the sewer thing for the church, you are going against the Cloverly master
12 plan. And I think your Council spent a lot of time developing the master plan and I would
13 strongly recommend that you stay with what you have already approved. The other
14 issues that we have here, you could clearly read them. I just wish that you understand
15 that we, there is other land in the County where churches can go to, even up on New
16 Hampshire Avenue across 108. There is lots of land available. It was in the Washington
17 Post available for institutions to buy. I had looked at one large 20-acre plot for my
18 foundation that I want to set up in the area, and for, unfortunately, my foundation would
19 require a laboratory and I've shared a residence with -- in a laboratory for proteomics.
20 But anyways, I thank you for listening to me. I hope you understand and appreciate our
21 concerns. There are many here that could have participated and presented equally
22 similar statements to you, but we chose not to waste a lot of your time hearing the same
23 thing.

24
25 Council President Knapp,
26 Thank you very much. Avgerinos Vakalopoulos. Okay. We have a number of questions.
27 Mr. Elrich.

28
29 Councilmember Elrich,
30 I wanted to ask Mr. Remein.

31
32 Quentin Remein,
33 Remein, right.

34
35 Councilmember Elrich,
36 Remein, if you wanted to explain the issues with the two creeks.

37
38 Quentin Remein,
39 Okay. I sat down with Katherine Nelson of Park and Planning and she is the contact
40 point there. I think what the, if you look at the overhead map here, you can see that this
41 particular piece of property is behind the storm water management facility for the state
42 for New Hampshire Avenue. The second piece is also behind another storm water
43 management. If you can follow the creek, you can see that it meanders sort of to the
44 upper left hand part of the page. It goes past another pond which is an irrigation pond.



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1 Basically all this land here is part of a, has a soil type that allows water to percolate up
2 through it. Water is, from the ridge on New Hampshire Avenue is percolating through
3 this soil layer and comes out of springs. Both of these two pieces of property are fed,
4 are the headwaters of the two branches of the Bryant's Run. One that goes here and
5 then one that goes down the other side of Bryant's Nursery Road. Basically by paving
6 over half this piece of property, you are paving over the source of water, the continuous
7 source of water for these tributaries and you're replacing it with parking lots, which
8 would create excessive run off. And the other point I made in the paper is, there is no
9 place for water to, there is already two ponds there. There is no place for a storm water,
10 another storm water management or any type of a facility because this ground is
11 saturated. With the springs, between the springs coming out and the storm water
12 managed ponds that exist there already, it is not viable. So I'm suggesting that that be
13 looked into, seriously looked into before granting any sort of water sewer category
14 change. Because this property just isn't developable for storm water management
15 purposes. Thank you.

16
17 Council President Knapp,
18 Thank you. Councilmember Floreen.

19
20 Councilmember Floreen,
21 Thank you. Ms. Nerret, is that correct, did you say that you live right adjacent to this
22 property?

23
24 Paula Nerret,
25 No. I live eight houses down from that parcel.

26
27 Councilmember Floreen,
28 So that's down on New Hampshire, on Bryant's Nursery.

29
30 Paula Nerret,
31 On Bryant's Nursery Road, correct.

32
33 Councilmember Floreen,
34 And so you're eight down on, are you on, just so.

35
36 Paula Nerret,
37 Same side.

38
39 Councilmember Floreen,
40 I'm looking at Mr. Remein's map.

41
42 Paula Nerret,
43 Right.



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1 Councilmember Floreen,
2 Which is a beautiful map, congratulations.
3
4 Paula Nerret,
5 Right.
6
7 Councilmember Floreen,
8 So you're down on the same side there, one, two, three, four, five, six, seven, eight,
9 right at the curve there?
10
11 Paula Nerret,
12 Right. I am.
13
14 Councilmember Floreen,
15 That's you.
16
17 Paula Nerret,
18 Right here.
19
20 Councilmember Floreen,
21 Okay.
22
23 Paula Nerret,
24 Yes.
25
26 Councilmember Floreen,
27 Thanks. Thanks very much. And Mr. Purich.
28
29 Edward Purich,
30 Yes.
31
32 Councilmember Floreen,
33 You said you are nearby. Are you also on Bryant's Nursery?
34
35 Edward Purich,
36 No I'm directly across New Hampshire Avenue on the other side of the street. Right
37 behind the Shell station.
38
39 Councilmember Floreen,
40 Okay.
41
42 Edward Purich,
43 Or the CITGO. See the gas station? My property's directly behind it.
44



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1 Councilmember Floreen,
2 You're right behind the gas station.

3
4 Edward Purich,
5 Yes.

6
7 Councilmember Floreen,
8 Okay. Thank you very much. I think we'll be taking this up in Committee it says on the
9 7th. So feel free to join us then.

10
11 Council President Knapp,
12 Great. Thank you very much. This concludes this public hearing. Good afternoon. This
13 is a public hearing on Expedited Bill 22-08 Retirement - Elected officials which would
14 allow an active member of a County retirement plan who becomes an elected official to
15 choose to continue to participate in that plan, clarify the disability retirement provisions
16 applicable to members of the elected officials plan, repeal certain obsolete provisions
17 relating to an elected officials eligibility participate in certain retirement plans, correct
18 certain cross-references, and make technical amendments to the law relating to
19 retirement plans, and generally amend the law relating to retirement plans for County
20 employees and elected officials. Persons wishing to submit additional material for the
21 Council's consideration should do so before the close of business on July 7, 2008 so
22 that individual views can be included in the material which staff will prepare for Council
23 consideration. A Management and Fiscal Policy Committee worksession is tentatively
24 scheduled for July 21, 2008 at 9:30 a.m. Please call 240-777-7900 for more information.
25 Before beginning your presentation please state your name clearly for the record. We
26 have two speakers, Joe Adler representing the County Executive and former
27 Councilmember Gail Ewing speaking as an individual. Mr. Adler, you are first.

28
29 Joe Adler,
30 Good afternoon. Joe Adler, Director of Office of Human Resources representing the
31 County Executive. And just like to refer that there is a letter that the County Executive
32 signed when this Bill was originally transmitted supporting this. And my own testimony is
33 in written form so you have copies of it. I'll just merely summarize it. We believe that this
34 legislation attempts to correct what we believe was an oversight at the time the
35 employees retirement system was created so that someone who is in that system and
36 then runs for public office is able to stay in that same pension system rather than having
37 to go into the elected officials' system which we believe was the original intent of the
38 legislation when it passed so we're here on behalf of the County Executive to support
39 the Bill.

40
41 Council President Knapp,
42 Very good. Thank you very much.

43
44 Gail Ewing,



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1 Hello. I'm Gail Ewing. Nice to see everybody. It's nice to be on this side of the podium.
2 Long time since I did this. I am testifying today in support of Bill 22-08 concerning the
3 elected officials' pension plan for Montgomery County government. This Bill in no way
4 affects me. I would not qualify in any way so don't worry about that. However, I do have
5 a unique perspective on this matter. Prior to my election to the Council in 1990, I was
6 told that I would be able to buy back, my way back into the old County government
7 retirement plan that I had belonged to when I served as an aide to Councilmember
8 Esther Gelman. After my election, I was denied that right and forced into the elected
9 officials' pension plan. As a result, instead of having 13 plus years of County retirement
10 under the old original pension plan I was put into the new plan that started only from my
11 day of election, disregarding my earlier service. Also, the new plan is largely a self
12 savings plan rather than a retirement plan, and a serious short coming. I feel it is fair
13 and smart to enable elected officials who were Montgomery County employees before
14 being elected to office to continue in their original County retirement plan and not be
15 forced into the elected officials' plan. There are several reasons for my position. First,
16 the elected officials' plan was developed in the 1980s while I was on staff at the Council.
17 And the purpose of the plan was to help elected officials to be sure that they had some
18 kind of retirement. The Councilmember who introduced this Bill thought it was unfair for
19 someone to be elected to a 4-year term and never be able to qualify for County pension
20 because the County pension plan required five years of service. It is clear that by
21 forcing someone to give up their County pension in favor of the elected officials' plan
22 that a punitive action has taken place towards that individual. The elected officials' plan
23 is not helping the elected official, they are in fact losing a significant benefit, as I did.
24 Second, by forcing prior County government employees who become elected to give up
25 their long time retirement while still in service to the same government makes no sense
26 to me at all. Third, our County government has gone to extremes to bring bright and
27 highly qualified people on board to serve the residents of this County in some of the
28 most remarkable ways. One such arrangement had to do with the gentleman who was
29 the Economic Development Director for Montgomery County in the late 1990s and early
30 2000s. This man had been in a retirement plan through his job with Frederick County
31 and would only come on board if he could maintain the continuity of his retirement plan
32 and he hoped to be able to buy into the County's plan. When it could not be worked out
33 in a timely fashion this Director was put on the payroll of Montgomery College where he
34 could maintain the continuity of his retirement while working 90% of his time for County
35 government. Not the college. And this is how we served, and that is how he served up
36 until he was hired away to the O'Malley administration after the last election. My point
37 here is that certainly if the County can adjust their personnel policies concerning
38 retirement for individuals that have been hand selected by the County Executive, then
39 certainly we ought to be able to do something to help someone who has been elected
40 by the people of Montgomery County. Fourthly, it makes no sense to me in this
41 particular case for the person who is in the charge not to be in the same plan as his
42 employees. I urge you to support the Bill. Thank you.

43
44 Council President Knapp,



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1 Thank you very much. Thank you for taking the time to testify. Marc do you have?

2
3 Councilmember Elrich,
4 No, sorry.

5
6 Council President Knapp,
7 Okay. There are no questions. Thank you very much.

8
9 Gail Ewing,
10 Thank you very much.

11
12 Council President Knapp,
13 Councilmember Ewing, if you would stick around for just one minute. We've got a little
14 thing we're going to do in just a second that you might be interested in.

15
16 Gail Ewing,
17 Oh, yeah, I'll sit back there.

18
19 Council President Knapp,
20 Just don't leave yet.

21
22 Gail Ewing,
23 Thank you.

24
25 Council President Knapp,
26 This concludes this public hearing. Good afternoon ladies and gentlemen, this is a
27 public hearing on Expedited Bill 26-08 Personnel - Retirement - Amendments which
28 would require the County to make employee pension contributions for an employee who
29 returns to County employment from certain military duty, increase the percent of certain
30 contributions to the Retirement Savings Plan for Group One members, or Group I
31 members, and generally amend the County retirement law. Action is scheduled at the
32 conclusion of the hearing. Before beginning your presentation please state your name
33 clearly for the record. We have one speaker, Sara Miller on behalf of the County
34 Executive.

35
36 Sara Miller,
37 Thank you. And thank you for the opportunity to testify. My name is Sara Miller. I'm here
38 on behalf of the County Executive with the Office of Human Resources. This legislation
39 in these topics aren't new to this Council. There have been many discussions about it
40 briefly. This is a Bill necessary to implement certain provisions negotiated with McGeo
41 during reopener negotiations as well as pass through certain benefits to non
42 represented employees. The first thing this Bill would accomplish is to credit County
43 employees called to active military duty during employment with up to five years of
44 credited County service. Were the employee to then return after military service the



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1 County would make both the County's contributions as well as the employees'
2 contributions to the retirement plan to which the employee belonged. This will bring the
3 Montgomery County code into compliance with Maryland state law. The second item
4 this Bill attempts to accomplish is an increase in the contributions for both employees
5 and the employer to the Retirement Savings Plan. As you know, nonpublic safety
6 employees hired after October 1, 1994 participate in the RSP. This would increase the
7 employee contribution to 4% and increase the County contribution to 8%. We believe
8 these increased contributions by both the employees and the County signal the parties'
9 mutual commitment to savings towards retirement and will aid in the recruitment and
10 retention of the County's work force. Also as you know, the Council previously approved
11 the appropriation necessary to accomplish these increases in the operating budget.
12 Thank you.

13
14 Council President Knapp,
15 Thank you very much. Councilmember Berliner.

16
17 Councilmember Berliner,
18 [INAUDIBLE].

19
20 Council President Knapp,
21 Okay. Councilmember Leventhal.

22
23 Councilmember Leventhal,
24 I made this point before but while the witnesses are here from the prior issue, this
25 increase in the County's contribution to a defined contribution plan does not apply to
26 elected officials.

27
28 Sara Miller,
29 That's correct.

30
31 Councilmember Leventhal,
32 Yeah. So the testimony that was given prior about how in prior years before 1994,
33 elected officials were taken care of a certain way does not apply at all to anyone elected
34 since that time and these changes do not apply to elected officials today. I just wanted
35 to be clear about that.

36
37 Sara Miller,
38 That's correct.

39
40 Councilmember Leventhal,
41 Thank you.

42
43 Council President Knapp,



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1 Okay. Thank you. This concludes this public hearing. We're going to, where'd she go?
2 You guys were too quick. I need Christie back. Okay. Give me just one second. While
3 we are waiting for that, I guess we'll go to, we'll turn back to the Legislative Session day
4 number 21, Call of Bills for Final Reading. We have Expedited Bill 26-08 Personnel -
5 Retirement – Amendments. MFP Committee recommendation? Councilmember
6 Trachtenberg.

7
8 Councilmember Trachtenberg,
9 Short and sweet. We recommend that the Bill be adopted as introduced.

10
11 Council President Knapp,
12 Very good. Are there?

13
14 Councilmember Trachtenberg,
15 See, I got in.

16
17 Council President Knapp,
18 That was good. Is there a discussion on Expedited Bill 26-08? Seeing none, Madam
19 Clerk, if you would call the roll.

20
21 Council Clerk,
22 Mr. Elrich.

23
24 Councilmember Elrich,
25 Yes.

26
27 Council Clerk,
28 Mr. Praisner.

29
30 Councilmember Praisner,
31 Yes.

32
33 Council Clerk,
34 Ms. Floreen.

35
36 Councilmember Floreen,
37 Yes.

38
39 Council Clerk,
40 Ms. Trachtenberg.

41
42 Councilmember Trachtenberg,
43 Yes.



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1 Council Clerk,
2 Mr. Leventhal.

3
4 Councilmember Leventhal,
5 Yes.

6
7 Council Clerk,
8 Ms. Ervin.

9
10 Councilmember Ervin,
11 Yes.

12
13 Council Clerk,
14 Mr. Berliner.

15
16 Councilmember Berliner,
17 Yes.

18
19 Council Clerk,
20 Mr. Andrews.

21
22 Councilmember Andrews,
23 No.

24
25 Council Clerk,
26 Mr. Knapp.

27
28 Council President Knapp,
29 Yes. Bill 26-08 is approved 8-1. Thank you very much. We are going to recess briefly
30 but before we do that, I wanted to just mention two individuals. As we all know, on this
31 side of the dais, there are lots of folks who make County government run and make in
32 particular County Council run and operate. And some of them have the opportunity to sit
33 in front of us and we hear from them quite regularly. A couple of them are just here
34 making sure that what we say gets captured the right way and makes sure that we,
35 when we do raise our hand that it's recorded the right way and don't necessarily say a
36 whole heck of a lot. But the reason that the County Council operates as well as it does
37 is the commitment to service and the time that people, that these folks put in. And today
38 is the last Tuesday that Elda Dodson who is in the back of the room, and Christy Hiler
39 who was just sitting in that chair next to Mr. Leventhal where Mary Anne is right now,
40 will be retiring and will be done as of next week. And Elda has served with us for 23
41 years, Christy has been with us for 22 years, and it is through their service that most of
42 us look probably much better than we deserve to look. It is just with great honor,
43 pleasure, and distinction I wanted to recognize both of them and thank them for their
44 years of service. [applause]. Okay. Sure, we can do that too.



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Councilmember Floreen,
Yeah.

Council President Knapp,
Okay. Councilmember Floreen.

Councilmember Floreen,
For a point of personal privilege, I would just like to point out that the County Executive's early retirement program is causing us all a certain amount of disarray and I would like to add to my thanks and praise my confidential aide, Merle Steiner. Today is her last Tuesday. She is retiring after 24 years. She has spent 24 years averting Councilmembers' half-baked ideas, 24 years coming up with creative solutions to all kinds of constituent and budgetary needs and I'm looking forward to starting out with a new one, but I am very much going to miss Merle. She served Bill Hannah and Ike Leggett, knows where all the bodies are buried. And we are going to keep her on speed dial.

Council President Knapp,
Good.

Councilmember Floreen,
I have been very lucky and I'm going to need all your help in making it through this.
[applause].

Council President Knapp,
So with that we are going to take a brief, 5-minute recess and then we'll reconvene and move back into our appointments on the Planning Board. We'll reconvene at 2:25. Okay. We are back. Thank you all very much for our brief recess. We now turn to our Agenda item number 14, Appointments to the Planning Board, Planning Board members of the Maryland National Capital Park and Planning Commission and Montgomery County Planning Board. As I think everyone is aware, we have two vacancies. One created tragically by the passing of Dr., Mr. Gene Lynch earlier this year and Allison Bryant, whose term will be expiring or expired ten days ago. So we have been fortunate to have an array of applicants. We had 29 applicants for these two positions and the Council selected to interview 12 of those, concluding our interview process this morning. As I understand, we are procedurally all taken care of so that we are in good shape as it relates for disclosure and ethics perspective for all of our candidates. We had 12 interviews. I think they were very worthwhile and very significant. Clearly, the direction of the Planning Board is significant for where we, as a County, are going to next. The last four years have been a bit of a struggle. And I think that with the appointment of a new Planning Director, the appointment of Mary Bradford as our Director of Parks a couple of years ago, I think internally we are getting the pieces put together and now I think the challenge before us is to get the Planning Board



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1 back together to have a full group of five and to establish a sense of stability, but more
2 important, to really work with us to establish a sense of vision. The challenges I think we
3 all know we have before us are how do, we know where we are now, how is it that we
4 want to get to the next place as a community of a million people? And an evolution from
5 a suburban to an urban community in certain areas. How does that happen? What does
6 that look like? How do we address the traffic issues that we know we have before us?
7 How do we create more transit oriented development? How do we preserve the Ag
8 Reserve recognizing that anywhere from half a million to a million and a half people are
9 coming to this region over the course of the next 15 to 20 years, that's not going to be
10 an easy thing. We need to have a strong team in place to help us do that and I think we
11 had a fine array of applicants from which to select to get us to that point. I'm going to
12 see if Justina has anything that procedurally we need to say or do.

13
14 Justina Ferber,
15 I think just make a point of saying that you don't have to appoint a democrat to the slot
16 for, I mean, you can appoint either one to either slot.

17
18 Council President Knapp,
19 Okay. I think we need to explain that further. So, let me say, okay, what we have before
20 us is, Allison's, Ms. Bryant's seat is expiring.

21
22 Justina Ferber,
23 Right.

24
25 Council President Knapp,
26 So that means there are two full terms to be filled.

27
28 Justina Ferber,
29 Well, there is one full and one partial.

30
31 Council President Knapp,
32 Right. No, but, right. Okay.

33
34 Justina Ferber,
35 Yeah.

36
37 Council President Knapp,
38 So there is a 4-year term for Allison Bryant's vacated seat. Then there is a 3-year term
39 remaining on Gene Lynch's seat. So what Ms. Ferber is saying is that we don't
40 necessarily have to put the republican seat in the 4-year term, in the one 4-year term, or
41 vice-versa, it's up to us to choose.

42
43 Justina Ferber,
44 Yes, it is up to you to choose who you put in each.



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1
2 Council President Knapp,
3 Correct.

4
5 Justina Ferber,
6 However, no. However, you have to remember that whoever fills Gene Lynch's term has
7 the ability to have a partial and two full terms. Whereas the person who fills Allison's
8 term only gets.

9
10 Council President Knapp,
11 Is everyone seeing little light bulbs going off on top of everyone's head right now?
12 [laughter].

13
14 Justina Ferber,
15 Okay. I do have charts if you need charts. I do have charts.

16
17 Council President Knapp,
18 Okay . So, let me just look down this side of the dais. Does everyone understand where
19 we are? This side? Yes, okay. I'm going to, I was going to suggest that we move first
20 onto the republican seat, the republican/independent seat and to fill Allison Bryant's
21 expired term. Okay? I would nominate for that seat, Ms. Amy Presley. Okay. And I
22 would see if there are additional nominations for that. I see none. I just wanted to make
23 just a couple of brief remarks, because I have had the distinct pleasure of working with
24 Amy for the last four years. I, at that point thought it was somewhat of a mistake, I got
25 invited to a meeting in what was then a very small town of Clarksburg and walked in and
26 there were 75 people in the room and all of whom were pretty upset about a lot of stuff
27 we hadn't necessarily talked about before. Amy was the person in the room kind of
28 leading the charge. Once we got past the initial shock we sat down and actually over
29 the course of the last four years, there has been a very productive, I would say,
30 discourse as to issues that have arisen in Clarksburg and issues that have been
31 addressed in Clarksburg. Much of that has been spearheaded by Amy. But in addition
32 to focusing not just on her local community, she has taken this opportunity to reach out
33 and work with civic communities throughout the County and I think has shown a great
34 propensity to delve into the details to understand the issues at hand, and many times to
35 know more than many of us do as to what's going on and how things should be. And I
36 just very much appreciate the efforts that she has put forward. So, with that I would put
37 her, forward her name for nomination for that. That has been seconded, although we
38 don't necessarily need seconds. There are no other names that have been nominated
39 at this point. So with that, I would ask for, call for a vote on the first seat for the Planning
40 Board that we have before us and the nomination of Amy Presley. All in support of Ms.
41 Presley, please indicate by raising your hand. That is unanimous. Okay. We now turn to
42 the second seat, which is now filling the expired term of Mr. Gene Lynch. And I would
43 turn to nominations. Mr. Berliner.



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1 Councilmember Berliner,

2 Thank you, Council President. It is my honor to nominate Joe Alfandre to serve the
3 unexpired term and future terms of Gene Lynch. I did not know Mr. Alfandre until this
4 process got underway. My colleagues may recall that I had the privilege of nominating
5 Gene Lynch for his seat. And I did so then because I was convinced that the qualities
6 he brought to that position were qualities that the Board desperately needed, which was
7 a smart growth builder who had served and came out of the civic community. That
8 combination, I think, is critical. That skill set of being able to turn to the building industry
9 with some understanding of what it means to build something is so important. I don't
10 know how our Board can function well without that perspective. I thought that at the time
11 notwithstanding that we had superb candidates then as we do now. We are so blessed
12 with the quality of people that have applied for this position. Any number of them could
13 serve with great distinction. So in my internal process, it was really what quality is most
14 important for the Board at this moment in time? And I think that Mr. Alfandre is the
15 rightful heir to the Gene Lynch seat, because he, like Gene, was a builder. Not just a
16 builder, but someone who built what basically is universally acclaimed as one of the
17 finest communities that we have. This is somebody who knows what it takes to build it
18 the right way. And yet, he also has won the respect of the civic community. I have been
19 contacted by a number of people in my community strongly urging me to support Mr.
20 Alfandre because he is sensitive to the needs of neighborhoods. So again, you have
21 this builder who can turn to builders who come before the Board and say, and challenge
22 them. And challenge them from a base of knowledge that no one else that came before
23 us has because unless you are a builder you don't know their language, you don't know
24 their internal calculus. So I think anyone who can build the quality of projects that Mr.
25 Alfandre has built, that understands the industry in which he understands it, who has
26 won the support of neighborhood activists in the way in which he has, I think that
27 commends him to at least to me and I hope ultimately to my colleagues here. It is for
28 that reason that I am supporting him again, again notwithstanding how superb so many
29 of the other candidates are and would be if they were to serve on the Board.

30
31 Council President Knapp,
32 Councilmember Floreen.

33
34 Councilmember Floreen,

35 Thank you. I would like to place in nomination someone I really didn't know very well at
36 all before I met with her in the appointment process experience. But the more she
37 spoke, the more I thought this is the kind of person I think that we need to reflect the
38 complexity and the diversity of Montgomery County. And that would be Mary Wells
39 Hartley. She is a woman of color who would bring, I think, a critical need for racial
40 balance and diversity to the Planning Board; with Allison gone, we will have no one.
41 Mary brings to the Board experience as an advocate for parks. And I will remind us all
42 that this is not just about planning. Everyone is an expert on planning these days.
43 Certainly we are. Certainly everybody in this room is. But parks? Huh-uh. But that is one
44 of the most important elements of our quality of life that we have to manage and



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1 assume responsibility for. And I think it's critical that we have a strong advocate for what
2 has long been frankly an overlooked contribution to our green space, to our recreational
3 opportunities and for our capacity to grow as people. Another element that Mary would
4 bring to this Board is structural diversity. With Amy appointed we'll have Clarksburg
5 represented. We'll have Montgomery Village represented through the Chair. We have
6 Kensington represented currently. And we have Potomac already. But no one from
7 Silver Spring or the eastern part of the County. And I'll point out, well, I of course feel
8 this issue strongly. When I was appointed to the Board myself, gosh, let's see, 22 years
9 ago, my lord, I was appointed because if I, because the candidate who was actually at
10 that point rejected by then County Executive Gilcrest, her appointment would have
11 ensured that all members of the Planning Board were from the same segment of the
12 County, which was Bethesda, a great part of our community but not the only part. I will
13 remind us all. What Mary also brings to this is a sense of dealing with employees which
14 I think Parks employees are a different brand from the big picture planning guys. These
15 are actual, the rare part of Park and Planning that's devoted to delivering a product.
16 Everyone else is a dreamer and that's a good thing but we do need someone who
17 respects the people, who actually deliver the product. And then finally what particularly
18 moved me about Mary, and I think she may have been the only one who emphasized
19 this, was a real commitment to affordable housing. I think that is something that needs
20 to be up front and center in Montgomery planning thinking. We just had a little
21 presentation on this issue by our housing group. We'll see if we make any difference in
22 what we do in the coming months and years. But you need the right people at the table
23 and I think Mary would add a tremendous quality to our planning process that we need
24 to maintain. Diversity of experience and presence, I think, is a key element of what is a
25 community, board of community planners, not experts, but community representatives.

26
27 Council President Knapp,
28 Thank you very much. Councilmember Trachtenberg.

29
30 Councilmember Trachtenberg,
31 Thank you, President Knapp. I'm nominating this afternoon Benjamin Ross for the
32 Montgomery County Planning Board. Ben is actually someone that I have known I think
33 close to 15 years. And I'm nominating him this afternoon because I believe that Ben will
34 bring a unique and valuable perspective to the work that the Board actually does. I have
35 always seen Ben as a dedicated citizen activist specifically for smart growth. Ben
36 understands the subtleties of growth policy but he also understands the methods that
37 are necessary to achieve the goal of smart growth. I know that that's something that we
38 all embrace here clearly at the Council. In recent years, a consensus has developed in
39 the County for sensible planning that strengthens livable communities, the
40 empowerment of neighborhoods, but agreeing on policy goals is in many ways the easy
41 part. Where the rubber hits the road is an effective implementation that can adapt to
42 shifting economic conditions and events. Speaking of rubber and roads, I think it's
43 important to note that Ben has made a very powerful personal commitment to
44 transportation policy by actually not owning a vehicle and relying primarily on public



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1 transit. And he clearly works and lives productively here in the County. And whether you
2 take the bus or Metro to work every day, or you are actually looking at the increasing
3 cost of filling your car up with gas, it would actually be an interesting opportunity to have
4 someone on the Board who not only talks the talk but walks the walk, or in this case,
5 rides the ride. It's vital. Especially when we are thinking about the importance of metro
6 centered development. All of us on this Council recognize the need for diversity in
7 government, and society, and in policy making and on the Planning Board one barrier
8 that can be removed from the goal of diversity is to nominate someone like Ben, who
9 truly represents the transportation consumer. The Board needs to know how to adapt
10 principles into specifics that address the needs of the entire community. The list of
11 endorsements that I know we have all received, including those statements that quantify
12 both Ben's work ethic, and I underscore that, his work ethic and his commitment to
13 neighborhoods is stunning. And letters from the Sierra Club and others speak to his
14 superb qualifications and really his strong, long-term record of effectiveness. I believe
15 Ben would be a very valuable addition to the Montgomery County Planning Board.

16
17 Council President Knapp,
18 Councilmember Leventhal.

19
20 Councilmember Leventhal,

21 Well, I'm sorry to be redundant because other Councilmembers have said some things I
22 wanted to say but I do want to go on the record joining Councilmember Berliner in my
23 delight at the quality of the applicants that we have gotten for what is really an
24 undesirable assignment. [laughter]. The Planning Board is facing some really tough
25 challenges. We gave them a terrible budget. We're not happy with them, I'm not happy
26 with them and they are screamed at by all sides on the complexity of issues that they
27 have to deal with in neighborhoods and from the business community. And it's one of
28 these thankless tasks. The only job I can think of that may be worse is County Council.
29 So, and yet, having said that, we had very strong applicants on the republican side of
30 the aisle, I was impressed that a Council that has disagreed amongst ourselves on
31 many issues unanimously recognized that Amy Presley was the cream of a strong field
32 and Paula – let me just say also is a noteworthy community activist with much expertise
33 and who has much to contribute to public service in the years to come. With respect to
34 the three candidates that have been named here I think any one of them would be an
35 outstanding commissioner. And who knows, you know, what will happen, as it stands,
36 we actually have a seat coming up every year, this year and the next two years, so, you
37 know, I would certainly encourage anyone who doesn't finish in this round to stay
38 involved, to keep attending meetings of the Planning Board because we have another
39 democratic seat a year from now and we have another democratic seat coming up a
40 year after that. So my vote goes to Ben Ross. I think his qualifications are extraordinary.
41 A Ph.D. in physics from MIT. Undergraduate at Harvard. Widely published in a wide
42 range of areas. An eclectic, diverse literary and publishing background. Deep expertise
43 in issues of ground water pollution which have been identified here in the County as our
44 number one environmental challenge. Strong support, as Councilmember Trachtenberg



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1 points out, in the environmental community. But I think also a good understanding of
2 what it, of how important it is to have a healthy economy here and to have vital urban
3 centers, transit-oriented development, and housing policy, and a growth policy that
4 moves us into the future. So I would be, frankly, extremely comfortable with Ben or with
5 Joe or with Mary. I think all three of them made a very strong case for themselves but
6 my vote goes to Ben Ross.

7
8 Council President Knapp,
9 Thank you very much. Councilmember Praisner.

10
11 Councilmember Praisner,
12 Yes. I would like to join my colleague Ms. Floreen in supporting Mary Wells Hartley for
13 the Planning Board. Mary has spent some 42 years with the Maryland National Capital
14 Park and Planning Commission. She just retired last year as the Director of Park and
15 Planning in Prince George's County and I think she brings a wealth of talent, would
16 bring a wealth of talent to the Planning Board. I second everything Ms. Floreen said
17 about her. I think she would be a very strong commissioner for the Planning Board, with
18 a wide range of experience. She has worked very well with the community and certainly
19 knows the situation at the parks.

20
21 Council President Knapp,
22 Thank you, very much. Council Vice President Andrews.

23
24 Councilmember Andrews,
25 Thank you, President Knapp. Well, I think you could put together an excellent Planning
26 Board from the applicants that we had. You could certainly, of the 12 folks we
27 interviewed, there are at least five that I would be comfortable with on the Planning
28 Board. So that is a good situation to be in. In one sense we can't lose. But my vote goes
29 to Ben Ross and it goes to him because of a combination of factors. One is I think his
30 undeniable intellect and brilliance in analysis. Many of his articles I can't pronounce. I
31 was going to ask him about the diversion capacity of capillary barriers and I held off. But
32 he actually, not only does he have some background in issues that the Planning Board
33 should know about, but he is someone who will pick up on issues quickly that he hasn't
34 been familiar with. And he has been active for many, many years on planning issues, on
35 transit issues, his work ethic is unquestioned. And he has been a very effective
36 community leader as well. So I feel that I have a good sense of what he will do on the
37 Planning Board in terms of his values and philosophy and effectiveness. And I think
38 that's important. And I believe that it would be a Planning Board that would benefit from
39 his perspective. And I really do think that he has shown a commitment to transit that
40 bodes well for future transportation in this County. So for all those reasons I am pleased
41 to support Ben Ross for the seat.

42
43 Council President Knapp,
44 Councilmember Elrich.



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Councilmember Elrich,

I agree with the previous comments that we could have selected an entire Planning Board from the candidates that we had in front of us. I was really impressed by the diversity and the wealth of opinions that came out. And I thought we would be well served and I'm encouraged, I think it's George's comment about future vacancies, is we clearly have a wealth of people that we can turn to in future years. I'm going to be supporting Mr. Alfandre for this position. I think that we need somebody with the kind of expertise and knowledge in the field in which we're asking the Planning Board to act. And that, for me, is the persuasive factor here. I find that, I mean, too often we have listened to any number of people in the public arena say the developers say they need this. What do I know? That is not my business. I think as Roger pointed out, the advantage of having Gene Lynch on the Planning board was it was his business and he had the ability to look through the arguments and to be able to say this makes sense, this doesn't make sense, and provide a perspective which I think is too often lacking in the work that a lot of us are asked to do. I was also, I actually had met Joe many years ago in a discussion about affordable housing so I know his interest in affordable housing isn't something that is current. I know that his interest in affordable housing goes back at least 15 years is when I think I first met him. I understand that is an ongoing commitment on his part and I'm very impressed by his view of where this County needs to go regarding transportation. Because I do not believe, I mean, I woke up this morning to another headline in Yahoo about a scientist says this is our last chance to get it right. Getting it right isn't just an issue that's the responsibility of federal government, it is the responsibility of local government, and in my mind getting it right is making the decision to shift our resources and shift our emphasis out of roads and into transit. It is not that there are no roads and no improvements that need to be made, but the bulk of what we should be doing for the rest of this century needs to be in the transit direction. I feel pretty strongly that Mr. Alfandre gets that. He gets the connection between urban areas and the areas that surround him. I thought his comments on that we use words like new urbanism and smart growth all too easily, we don't think about the complexity of what they really mean indicated the kind of depth that I want. Any candidate can say I support smart growth or I love new urbanism, but to understand what new urbanism and smart growth translates to on the ground and to understand that a smart growth neighborhood is next to a suburban neighborhood and how those two articulate to each other is just as important as what I put in the smart growth center is the kind of understanding that I want to see in a Planning Commissioner. I'll be happy to vote for Mr. Alfandre today.

Council President Knapp,

Good. I see no further comments. I just, before we voted, I just wanted to again, echo the comments that have been stated as it relates to the quality of the candidates and thank all of them on behalf of the Council for their willingness to apply in the first place. When you throw your hat in that ring it can take some interesting twists and turns. And so I appreciate folks' willingness to do that and those folks who we interviewed I think did an outstanding job and really gave us their best so I very much thank and appreciate



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1 all of their efforts and willingness to want to even serve in the first place. With that we
2 now have three names in nomination. And so, what we will do is I'll go in alphabetical
3 order and just, and present the names to colleagues for vote. In the event that no name,
4 no person receives a majority, then the lowest vote getter of the three will drop off and
5 we will have a second round. And that will be our process from here. So first up is
6 Joseph Alfandre. Those in support of Joseph Alfandre please indicate by raising your
7 hand. Councilmember Elrich, Councilmember Berliner and myself. Three votes.
8 Benjamin Ross? All in support of Benjamin Ross? Councilmember Leventhal,
9 Councilmember Ervin, Council Vice-President Andrews, and Councilmember
10 Trachtenberg, that is four votes. And Mary Wells Hartley. In support of Mary Wells
11 Hartley please indicate by raising your hand. Councilmember Floreen and
12 Councilmember Praisner. So there are two votes. 4, 3, 2. So Ms. Wells Hartley drops off
13 and we now have before us Mr. Alfandre and Mr. Ross. I see no further discussion. All
14 in support of Mr. Alfandre please indicate by raising your hand. Mr. Berliner, Mr. Elrich,
15 Mr. Praisner, Ms. Floreen, and myself. That is 5. Those in support of Mr. Ross. Mr.
16 Leventhal, Ms. Ervin, Vice-President Andrews, and Ms. Trachtenberg. That is 4. So I
17 would then move by acclamation the appointment of Joseph Alfandre to the Planning
18 Board.

19
20 Unidentified
21 Second.

22
23 Council President Knapp,
24 Okay. Then, by acclamation, we now, all in support of Mr. Alfandre? That is unanimous.
25 Thank you very much. And I would extend our congratulations and well wishes to Mr.
26 Alfandre and Ms. Presley and our thanks and appreciation to all of our applicants.
27 Thank you very much. We now turn to District Council Session. We have in front of us
28 Introduction of Zoning Text Amendment 08-14, Transit Mixed-use Zone (TMX) -
29 establishment, sponsored by the Council President at the request of the Planning
30 Board. And I have a note that says we are introducing a revised version that was
31 distributed yesterday. Okay. And so everyone has a copy of that. Okay. Just for the
32 record, this was the zone that accompanies the Twinbrook Master Plan that we've
33 asked to be redone so that it addresses a number of the other issues we're trying to
34 address in this master plan. So this will go to, the action we have before us is the
35 Resolution to establish public hearing for July 29, 2008 at 1:30 pm. I need a majority. Is
36 there a motion? Just an introduction. We need to establish the date for public hearing.

37
38 Councilmember Andrews,
39 So moved.

40
41 Council President Knapp,
42 Moved by Council Vice-President Andrews. Second? Anybody?

43
44 Councilmember Praisner,



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1 Second.

2
3 Council President Knapp,
4 Seconded by Councilmember Praisner. All support of establishing the public hearing
5 indicate by raising your hand. That is unanimous among those present. Thank you very
6 much. We now have Introduction of Zoning Text Amendment 08-15, Arts and
7 Entertainment Use - CBD Zones, sponsored by the Council President at the request of
8 the County Executive. The action is a Resolution to establish public hearing for July
9 29th at 1:30 p.m. Is there a motion? Moved by Councilmember Elrich.

10
11 Jeff Zyontz,
12 This is on the Executive's Bill?

13
14 Council President Knapp,
15 Correct.

16
17 Jeff Zyontz,
18 We do have a revision of that as well that's being passed out now.

19
20 Council President Knapp,
21 Okay.

22
23 Jeff Zyontz,
24 It just changes a few words and makes sure that the scope is correct. Most of them deal
25 with tense in the order of things, so.

26
27 Council President Knapp,
28 Let me, let me, let me just say, as I understand, a Bill had been sent over by the
29 Executive Branch. Mr. Zyontz had made some modifications and we've actually gotten
30 everybody in agreement now as to what's being introduced. And so, that's what we had
31 before us. So, we had a motion by Councilmember Elrich for the, establish a public
32 hearing. Is there a second? Anyone?

33
34 Councilmember Andrews,
35 Second.

36
37 Council President Knapp,
38 Council-Vice President Andrews. Not my Bill. Okay. All in support of establishing a
39 public hearing for 08-15, indicate by raising your hand. I think that's unanimous among
40 those present. Comments, Councilmember Floreen?

41
42 Councilmember Floreen,
43 Well, we just got something, but they don't actually have Bill numbers on them. Now, I
44 know that's detail.



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1
2 Council President Knapp,
3 Which.

4
5 Jeff Zyontz,
6 No, it has Text Amendment 07, 08-15.

7
8 Councilmember Floreen,
9 What I.

10
11 Jeff Zyontz,
12 In the top corner.

13
14 Council President Knapp,
15 That's 08-03 and that's 08-15.

16
17 Councilmember Floreen,
18 Oh, okay. Okay.

19
20 Council President Knapp,
21 You're good.

22
23 Councilmember Floreen,
24 Thank you.

25
26 Council President Knapp,
27 Okay. And we have now Introduction of Subdivision Regulation Amendment 08-03 Arts
28 or Entertainment Use - Validity Period, sponsored by the Council President at the
29 request of the County Executive. And again, our action is to establish a public hearing
30 for July 29th at 1:30. Is there a motion?

31
32 Jeff Zyontz,
33 And again, a revision.

34
35 Council President Knapp,
36 Oh, and a revision to that.

37
38 Jeff Zyontz,
39 Again, there's a revision.

40
41 Council President Knapp,
42 Okay. Moved by Councilmember Berliner. We don't like to second things today.
43 Anybody want to second this one?
44



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1 Councilmember Trachtenberg,
2 Second.

3
4 Council President Knapp,
5 Seconded by Councilmember Trachtenberg. All in support indicate by raising your hand.
6 That is unanimous. Excellent. So all of these will have public hearing on July 29th. And
7 now, we have Action Resolution to approve a policy for the decision-making sequence
8 involving the abandonment of a public right-of-way. The PHED Committee recommends
9 approval and if I find the right piece of paper I can hopefully talk about it. Although, I will
10 likely defer to our staff for this, I was approached by staff in that, you know what, the
11 background actually may be the most helpful. Local zoning map amendments
12 applications involve the same property as an application for a right-of-way
13 abandonment. The Council makes a decision on both of these applications. Although
14 the right-of-way abandonment must be decided first to avoid contingently approving the
15 zoning, the County Code is silent on whether the Hearing Examiner's opinion can wait
16 for the Council's abandonment decision. The Hearing Examiner's practice has been
17 either to hold the hearing and leave the record open until the Council has made a
18 decision on the right-of-way abandonment or to postpone the hearings until the Council
19 makes a decision on the right-of-way abandonment. The resolution attached would
20 prohibit the Hearing Examiner from postponing a hearing or holding the record open if
21 the only reason to do so is to wait for the Council decision on a related right-of-way
22 abandonment. This was brought to the Council President's attention as something that
23 needed to be clarified. And I will willingly submit that there are at least two ways to do
24 this. And so, what we put forward was that if the Hearing Examiner's opinion on local
25 map amendments precedes a decision to abandon a right-of-way, the hearing is held,
26 the opinion is prepared without the benefit of the parties, or the Hearing Examiner
27 knowing whether the abandonment will be granted. If the abandonment is denied, the
28 entire proceeding may become moot. If the Council's decision to abandon the right-of-
29 way is made before the Hearing Examiner issues a report, the Council acts without the
30 benefit of knowing the Hearing Examiner's opinion on the local map amendment. In any
31 event, it would be difficult for the Hearing Examiner to wait for the Council's decision on
32 the right-of-way abandonment if the Council is waiting for the Hearing Examiner's
33 opinion to help it with the decision to abandon the right-of-way. And so, what we've laid
34 out here is effectively that, we'll go first, no, the Hearing Examiner goes first.

35
36 Jeff Zyontz,
37 Hearing Examiner goes first.

38
39 Council President Knapp,
40 The Hearing Examiner is going to go first. And there was a fairly robust discussion at
41 the Committee. It was a 2-1 vote. Councilmember Floreen and I agreed with the
42 legislation as I'd had it introduced. Councilmember Elrich's opinion the right-of-way
43 decision should be made in a penalty from the local map amendment and we want the
44 Council to make a decision on the right-of-way abandonment before the Hearing



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1 Examiner drafts an opinion on the local zoning map amendment. And I can honestly tell
2 you, it's not something I feel overly strongly about but I think what we have before us is,
3 it sets in place a way to proceed. And so, I'll turn to Mr. Zyontz and then to Ms. Carrier
4 for any comments that they may have. And then we can see if any Councilmembers
5 have comments.

6
7 Jeff Zyontz,

8 Again, from staff's position, as the Council President said, this is an area where it was
9 silent in the ordinance, and the event that made this more important for you to decide
10 this issue, is your change to the road code last fall, where the road code went from
11 being a decision on the record to being a legislative decision when you do
12 abandonments. So abandonments became open to all testimony. In that case you
13 certainly would want to know, well, Council staff would think that the Council would want
14 to know the Hearing Examiner's opinion before proceeding. There is a cautionary note
15 here is that you can't take things from the record of the road abandonment into the
16 zoning case when you make that decision. You can't rely on things in the road
17 abandonment decision unless it's in the record of the zoning case itself. Either way, that
18 is, in either order, it's better that you decide and prescribe a decision than to leave it
19 open because it could lead to the possibility that the Council will be waiting for the
20 Hearing Examiner and the Hearing Examiner will be waiting for the Council and that just
21 didn't seem like a good public policy to follow.

22
23 Council President Knapp,

24 Okay. We have comments or questions. Councilmember Berliner. Well, hold on,
25 Councilmember Elrich, I just wanted to go to the Committee first.

26
27 Councilmember Elrich,
28 [INAUDIBLE].

29
30 Council President Knapp,

31 Okay. Go ahead. Go ahead Councilmember Berliner.

32
33 Councilmember Berliner,

34 Thank you Council President. I have been persuaded that while I appreciate that there
35 are arguments on both sides, I personally believe that the Committee's recommendation
36 with respect to this is the sounder of the two approaches. I know I would be more
37 comfortable in having an entire record before me before I vote on a particular piece so
38 that I know the context as opposed to taking what could be the most controversial piece
39 first without knowing the context. So we're ultimately going to have to rule on it. But I
40 just think we're better served by having the whole hearing record before us when we do
41 so. I have a question for Francoise which is, my understanding, it has been reported to
42 me that should the Council adopt this legislation or that resolution, that you would make
43 it applicable to special exceptions as well.



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1 Francoise Carrier,

2 No, I would not. I don't believe that they are the same. The Council doesn't make a
3 decision on special exceptions. I don't believe it has any effect on special exceptions
4 whatsoever. Unless you change it to direct me to apply it I don't find it applicable. The
5 context is different in two ways. One way I have not sorted out. I believe it may come
6 before me this fall, and that is a question, a jurisdictional question, whether a party who
7 does not own a roadway has the authority to request a special exception that would use
8 the surface of that roadway before an abandonment has been decided. I don't know the
9 answer to that. That is a legal question that may be raised in a case that is pending
10 before me. Unless and until it is raised, I don't plan to address it. The other question is
11 one that I believe I do have an expected resolution on which is that the Board of
12 Appeals can impose conditions on special exceptions. I am inclined to believe that that
13 allows the Board of Appeals to proceed with a special exception matter and if they
14 decide to approve it, to approve it conditioned on the approval of a later abandonment
15 by the District Council. So there are two separate issues. One is a jurisdictional question
16 which I have not addressed, but the thing that distinguishes special exceptions from
17 zoning cases most directly is that the Council cannot approve a zoning conditioned on
18 later approving an abandonment. They simply, you simply don't have the authority to do
19 that. So you must decide the abandonment first. Whether you decided three months
20 before or ten minutes before is the issue that the resolution before you could resolve.
21 The Board of Appeals can make a decision while the abandonment is pending. There's
22 no reason for that decision as far as I can see so far to be upheld. I believe that also
23 may be a legal issue before me in a pending matter and, you know, my mind may be
24 changed. I may be persuaded to the contrary by able counsel, but for the moment, that's
25 my inclination.

26
27 Councilmember Berliner,
28 Thank you for that clarification.

29
30 Council President Knapp,
31 Councilmember Elrich.

32
33 Councilmember Elrich,
34 I almost think for the very reason that Roger raised is why we ought to do it the opposite
35 way. I mean, we're supposed to be looking in the road abandonment, on the issues
36 related to the road abandonment, and my concern is that we're going to muddy these
37 two things together, and that we're going to be asked to create a firewall in our minds
38 between the issue about the zoning and the issue about the road abandonment. I don't
39 think it's realistic to think that the Councilmembers, you know, normally we're prevented
40 from receiving information on something that, we're not supposed to have ex parte
41 communications. Well, in effect we're going to be receiving it only we're going to be
42 pretending we're not receiving it. We could have a discussion about the overall case,
43 and that's somehow supposed to be separated in our brains from the discussion about
44 the abandonment. I find that extraordinarily difficult to do. I don't think any of us are



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1 realistically going to be able to do that or pretend, it's this issue of pretending not to
2 know what we know. I think once we know stuff, it begins to factor into how we look at
3 things. I'm very persuaded by the community argument that the least expensive thing, if
4 you're going to oppose something, is to oppose the abandonment and that if you win
5 that one then all the rest of the fight and all the money you're going to be obligated to
6 spend would never happen. And it seems to me that in fairness, we ought to decide
7 whether or not the government is going to give up a right-of-way rather than to force
8 these two things to come together and force the citizens to engage in both battles, one
9 battle maybe entirely unnecessary. It also means that the decision resulting in the road
10 abandonment could result in a change in the project, and that the applicant ought to go
11 forward knowing whether or not the County is going to abandon or what they're going to
12 abandon or how they're going to abandon rather than to go forward and then have an
13 abandonment decision made later. So I think for simplicity for citizens, for simplicity for
14 the process, and for clarity of our own minds, and the ability to keep these two things
15 separate when we're being asked to weigh them, we ought to let the road
16 abandonments go first and then take up the larger issue after we resolve the smaller
17 issue.

18
19 Council President Knapp,
20 Councilmember Leventhal.

21
22 Councilmember Leventhal,
23 Okay. I don't have a strong view on this either way. I want to cast a wise vote. I'm going
24 along with the hypothetical situation suggested by Councilmember Elrich. So I'm trying
25 to imagine without reference to any specific case, and I don't have a specific case in
26 mind, you have a property owner, the property owner wants to make use of a right-of-
27 way, the property owner has a local map amendment that they've duly filed, and they
28 want us to abandon the road. Do we not under this circumstance, what you're saying is
29 that, well let me just ask my question, so do we not put citizens, let's hypothesize that
30 citizens are, have concerns about this development, do we not put citizens in a situation
31 where they want to come to us, they don't like the whole thing, they're upset about the
32 development, they don't like it, it impacts them in a way they don't like. They are going
33 to lobby us on the road abandonment but they start straying into ex parte matters. And
34 so then they're meeting with us and we have to say, whoops, nope, we can only talk
35 about the road. We can't talk about the height, we can't talk about the windows, we can't
36 talk about the HVAC system, we can't talk about whether it's bricks or stone, we can't
37 talk about anything else that's a subject of anything else other than the road
38 abandonment. Isn't that unfair to the citizens to keep, which we've sat here on this
39 Council again and again and had to do to shut them down again and again and again
40 because neither they nor we are easily able to keep track of what is and what is not ex
41 parte.

42
43 Councilmember Elrich,



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1 I'd only say that the feedback I got from the community is they'd prefer to have the
2 discussion separate rather than to have the discussions combined together.

3
4 Councilmember Leventhal,
5 From which.

6
7 Councilmember Elrich,
8 And I think, I mean, this is here for a reason. I mean, this didn't pop up out of nowhere.

9
10 Councilmember Leventhal,
11 Well, is it ex parte to tell us why? Because I don't know why.

12
13 Francoise Carrier,
14 Shall I?

15
16 Councilmember Leventhal,
17 If it's in order.

18
19 Francoise Carrier,
20 Let me think about that for a moment.

21
22 Councilmember Elrich,
23 This is the.

24
25 Councilmember Leventhal,
26 Yeah. Yeah.

27
28 Francoise Carrier,
29 I already told the PHED Committee, I don't, I don't believe it is ex parte because it
30 doesn't go to the merits of anything.

31
32 Councilmember Leventhal,
33 Okay. If it's here for a reason, you know, it might be nice before we voted to know.

34
35 Francoise Carrier,
36 There is a case pending, I'm in the middle of the hearing, in fact I just broke the hearing
37 to come here.

38
39 Councilmember Leventhal,
40 Okay.

41
42 Francoise Carrier,
43 It's a long hearing.



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1 Councilmember Leventhal,
2 Okay.

3
4 Francoise Carrier,
5 We're on day three of five.

6
7 Councilmember Leventhal,
8 Okay.

9
10 Francoise Carrier,
11 And the local map abandonment, the abandonment was filed a very long time ago. Due
12 to various issues in the Executive Branch and change of personnel, it took them a year
13 to hold the hearing on the abandonment. In the interim they filed the local map
14 amendment. There was opposition represented by counsel. Counsel for the opposition
15 requested that I postpone the local map amendment hearing until the abandonment had
16 been decided so that his clients would not have to pay the cost of preparing for and
17 participating in the zoning hearing which turns out to have been a very long hearing and
18 so he rightly estimated the cost would be substantial. I postponed the hearing. I, you
19 know, the counsel for the applicant clearly opposed it. I mean, that was the only position
20 they could reasonably take. But they didn't have arguments that I found persuasive. I
21 found that in that situation the equities of saving them potentially unnecessary cost
22 seemed to outweigh the benefit to the applicant of moving forward the hearing when, in
23 my experience, it has always been our policy not to submit a report to the Council until
24 the Council has acted on the abandonment.

25
26 Councilmember Leventhal,
27 Okay.

28
29 Francoise Carrier,
30 I had no inkling that the Council might prefer to have my report when they considered
31 an abandonment. So I continued to postpone it for months until I received the report
32 from the County Exec's Hearing Examiner and the recommendation from the County
33 Exec. At that point, I thought the equities had shifted and I went ahead and started the
34 hearing.

35
36 Councilmember Leventhal,
37 Okay. So this matter is before us as a blanket policy because the Hearing Examiner
38 was seeking guidance on how to handle the timing of this specific application?

39
40 Francoise Carrier,
41 No, I didn't seek guidance. I don't know where.

42
43 Councilmember Leventhal,
44 Did Council staff bring this to us?



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1
2 Francoise Carrier,
3 Yeah.

4
5 Councilmember Leventhal,
6 Okay.

7
8 Unidentified
9 And who brought it to.

10
11 Councilmember Leventhal,
12 So Council staff felt it was important that the Council give blanket guidance because the
13 Council staff was aware that the Hearing Examiner was facing this dilemma with respect
14 to this one application.

15
16 Jeff Zyontz,
17 And we thought that there was the possibility of deadlock of everybody waiting for
18 everybody else. That you would be waiting for the Hearing Examiner.

19
20 Councilmember Leventhal,
21 Well, I am really.

22
23 Jeff Zyontz,
24 The Hearing Examiner would be waiting for you.

25
26 Councilmember Leventhal,
27 Okay. Let me just, I'm agnostic still. I mean, first of all, I want to say Francoise Carrier is
28 one of the best employees Montgomery County has.

29
30 Francoise Carrier,
31 That's very kind.

32
33 Councilmember Leventhal,
34 I mean, she was, she is detail oriented, she is an excellent writer, she is judicious, she
35 is fair and objective, so, you know, anything I can do to make her job easier, you know, I
36 would like to try to do. Having said that.

37
38 Council President Knapp,
39 She has to go back to work after this.

40
41 Councilmember Leventhal,
42 Having said that I'm not at all clear why we should make a blanket policy. So I'm not
43 persuaded of the need to vote on this policy. I mean, I understand that, I get it now, I
44 understand what gave rise to this, I didn't know until just now, and I understand that Jeff



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1 Zyontz and, also, you know, an outstanding employee and we're lucky to have him, felt
2 that this was a policy matter, but I'm not really seeing it as a policy matter. So, I'm not.

3
4 Francoise Carrier,
5 Well.

6
7 Councilmember Leventhal,
8 I mean, I could see different circumstances where different information at different times
9 would be of different use to the Council. I'm not sure that we, I'd have to be persuaded
10 that we really need to set a policy here at all.

11
12 Council President Knapp,
13 Councilmember Floreen.

14
15 Councilmember Floreen,
16 Thank you. Well, as George well knows, this is the T&E Committee issue. We take this
17 up first. And I think the Committee's recommendation is a good one and it's a helpful
18 one for the Council for a couple of reasons. Most notably, because naturally, if
19 something that effects another decision comes to us first, we are the target for
20 community engagement, naturally, and I think the proper issue is having the folks with
21 the expertise to manage the hearing to hold that hearing, have the engagement of all
22 the parties in an organized and focused way first so that our decision isn't used as the
23 opportunity to, sort of the tail wagging dog as it were or the trail wagging the dog as
24 might have been the case in the Woodmont East case which was actually a Planning
25 Board case or other kinds of cases to define the decision that we do commit to other
26 agencies at least as a first cut with the Hearing Examiner in this case or the Board of
27 Appeals in another case. Because they're just way better equipped to evaluate the
28 competing pieces of evidence and policy issues. I think there might be cases in which
29 there's no need for the Council to get engaged because it's pretty much resolved at an
30 administrative level that the matter may not go anywhere or perhaps there is a solution
31 that is arrived at that doesn't require our engagement. Perhaps a determination as to
32 right-of-way need or whatever is handled within the context of that project and a
33 resolution between the parties at the administrative level before it gets to us. But if we're
34 engaged first, we are in a position of determining what might be, depending upon the
35 case, a key determinant that may or may not be necessary to the resolution of the case
36 at the end of the day and in any event may not be necessary. We're not the best ones to
37 manage, you know, the kinds of policy issues that are required to be addressed in the
38 matter, in a zoning case or special exception case or a subdivision case, whatever the, I
39 think it's, we're not, that's not what we signed up for to make those decisions ordinarily.
40 The first cut delegated it to professionals such as Francoise or the hearing, the Planning
41 Board staff, or whoever it is to make the first cut on this. I don't think, my view is at least,
42 I don't think we should be the ones that folks go to first to resolve an issue that they
43 believe will determine a case that is pending in front of the Board of Appeals in this case
44 or the Hearing Examiner. I just don't think it's the best use of our time nor do I think we



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1 are well equipped to handle it and it's, I think it's premature, largely, for us to get
2 engaged when we don't have to. We haven't really done any that I can recall that have
3 been so involved in land use, in some of these zoning cases. I guess there have been a
4 couple over time that have, some have been more controversial than others. As I said, I
5 think there needs to be clarity as well as Francoise has indicated and staff has indicated
6 in terms of the process. That's my view, at least in terms of the T&E Committee's
7 engagement and resolution of those issues. So that's why I think the Committee
8 recommendation is the right way to go.

9
10 Council President Knapp,
11 Councilmember Berliner. Oh.

12
13 Francoise Carrier,
14 Council President, I have a suggestion that just came to mind. Do you mind if I offer it? I
15 don't mean to unnecessarily complicate things, but it occurs to me that there may be
16 one change that could be made that would address partially the concern of community
17 members who don't want to have to pay to do the zoning hearing unnecessarily. I was
18 just thinking of how the case that's before me has sort of unrolled. If the County Exec's
19 Hearing Officer had recommended denial, in some cases that could drive an applicant
20 to change their plans. They might not want to go forward to the Council on the
21 abandonment with a recommendation of denial. In some cases, they would take their
22 chances, when they think they have stronger arguments. But, you know, I see often with
23 the Planning Board and zoning cases, if the Planning Board recommends denial it
24 frequently results in the applicants revising their plans and going back and asking again.
25 It's possible that this could be reworded so that the Hearing Examiner is not, is directed
26 not to hold up the issuance of a report waiting for an abandonment decision, but leaving
27 the Hearing Examiner the discretion to postpone a hearing while waiting for an
28 abandonment proceeding to move forward, that would resolve, I think, one of Mr.
29 Elrich's concerns potentially in a case like this one where the Hearing Officer
30 recommended approval of the abandonment, it was my judgment that I should go
31 forward. I don't know where that would come down in every case. And in part this case
32 had had such a long delay that I felt I needed to go forward. In another case we might
33 not feel the need to do that. But if the Council's resolution were to let us postpone the
34 hearing, it might save, avoid that hearing in some cases.

35
36 Council President Knapp,
37 Councilmember Berliner.

38
39 Councilmember Berliner,
40 I listened to my colleague Councilmember Elrich's observations and since I am
41 generally in agreement with my colleague I take seriously your observations. But where
42 I have trouble following the logic is that I don't understand how it is that we look at an
43 abandonment in isolation from the context in which the abandonment is being proposed.
44 You suggested in your comment that we, you know, focus on that issue as though one



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1 could focus on it in isolation, and I'm never aware of that being true. That is, that the
2 abandonment is either in the public interest or not in the public interest in part as a
3 function of the context in which it is being abandoned. So I don't know how I as a
4 decision maker can make a decision on this piece without knowing its larger context and
5 whether or not there is agreement with respect to that larger context. I get where, if I
6 were a civic activist, and I knew that I was going to oppose the project, where I would
7 rather the Council not get out an abandonment early and save me the trouble. I
8 understand it from that perspective, but that's not my perspective as a decision maker
9 who has to decide whether or not this is in the public interest, because I don't know that
10 until I see the hearing record. I just can't follow your logic with respect to this and I want
11 to return back to the special exception conversation briefly if I could, and I would like to
12 understand in the frame, in the context in which I am trying to make my own decision,
13 that is that I don't know why in a special exception process I would be more equipped to
14 rule on an abandonment issue even though I don't rule on the special exception. I get
15 that never comes before me.

16
17 Francoise Carrier,
18 Right.

19
20 Councilmember Berliner,
21 But I still don't know whether this piece is in the public interest until I know whether or
22 not the special exception has been decided in a way that makes this logical to go
23 forward with.

24
25 Francoise Carrier,
26 I guess I would give you two things to think about. One is that Mr. Zyontz and I
27 researched the zoning ordinance in discussing the drafting of this resolution. He was
28 kind enough to involve me in that. And we found a couple of sections that give the
29 Council authority to direct the Hearing Examiner to take certain actions with regard to
30 zoning cases. You can tell me to postpone a case. You can tell me not to postpone a
31 case. There's a pretty clear line of authority that we concluded authorizes the Council to
32 adopt a resolution such as the one before you. I am not sure there is such authority with
33 regard to special exceptions.

34
35 Councilmember Berliner,
36 Could I stop you there?

37
38 Francoise Carrier,
39 Yes.

40
41 Councilmember Berliner,
42 I am assuming for purposes of this conversation that you're correct with respect to that.
43 My question is whether or not you would take our action here as precedent for the policy
44 that we believe is most appropriate even though we do not have, for purposes of this



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1 conversation, the legal authority to require you to adopt it, whether or not you would
2 believe that the logic underlying this action should be equally applicable to the special
3 exception process is my question.

4
5 Francoise Carrier,

6 You know, I guess since I'm sitting in this room hearing the conversation, I could
7 perhaps take it that way that at least one Councilmember felt that way. Future Hearing
8 Examiners will not have the benefit of having been in this conversation. They'll only
9 know what's written down. So I can't say that forever more that would be something that
10 could be sort of informally taken into account. More importantly, I have to say that the
11 jurisdictional question is what would control for me? And as I said, I don't know what the
12 outcome of that is. There are legal issues here which, in my mind, take precedence over
13 the Council's policy preferences.

14
15 Councilmember Berliner,

16 But the legal issues only goes to whether or not, at least as I understand it, perhaps
17 counsel could advise me, is to whether or not we could direct you.

18
19 Francoise Carrier,

20 No, no, I'm talking about other legal issues.

21
22 Jeff Zyontz,

23 Yeah.

24
25 Councilmember Berliner,

26 I apologize.

27
28 Jeff Zyontz,

29 The other legal issue is whether there is the jurisdiction is to do a special exception on a
30 right-of-way which you don't own on the plat. It's dedicated right-of-way. There's some
31 rights that have gone away. Now, if there's enough rights that have gone away that you
32 don't have ownership of that until it's abandoned, then it's a straight jurisdictional issue.

33
34 Francoise Carrier,

35 And that would mean the Board of Appeals can, I can't even hold the hearing, we can't
36 even accept the application. If we don't have jurisdiction to hear it, if you don't have
37 authority to file that petition, then you can't even file it until the abandonment has been
38 approved. I don't know the answer to that question.

39
40 Councilmember Berliner,

41 And how are we going to learn the answer to that question.

42
43 Francoise Carrier,



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1 I am expecting someone to raise it in the case that is pending before me so I'll have to
2 figure it out.

3
4 Jeff Zyontz,

5 That is, that type of issue is what's come up down at the Planning Board in my past
6 experience in a number of occasions, but be that as it may.

7
8 Councilmember Berliner,

9 So, let me try and repeat what I understand to be the nugget of the legal issue, sorry to
10 be slow. If somebody is making a proposal in a special exception case that includes an
11 abandonment, by definition, they don't have that property at this point in time.

12
13 Francoise Carrier,
14 Correct.

15
16 Councilmember Berliner,

17 So since they don't have it and are dependent upon an abandonment to obtain it.

18
19 Francoise Carrier,
20 Yep.

21
22 Councilmember Berliner,

23 The issue is whether you can act on the rest of the application predicated on that which
24 they don't own when you are deciding on it. Is that, do I understand it correctly?

25
26 Francoise Carrier,

27 The question is whether, the question really at base is whether they are allowed to file
28 the application. Here's what the requirements for a special exception petition say, if the
29 applicant is not the owner of the property involved, the lease, rental agreement or
30 contract to purchase by which the applicant's legal right to prosecute the petition is
31 established must be submitted. Yes.

32
33 Councilmember Berliner,

34 So the, quote, contract could be their application for a road abandonment.

35
36 Francoise Carrier,

37 Well, I suppose one could argue that.

38
39 Councilmember Berliner,

40 Okay.

41
42 Francoise Carrier,

43 Not to me the obvious meaning of the words, but you know, I'm open to suggestion.



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1 Councilmember Berliner,
2 Okay. I now have a better understanding.

3
4 Francoise Carrier,
5 There is very different language for local map amendments that specifically allows you
6 to file a local map amendment that includes an area of right-of-way for which you have
7 requested abandonment. It's covered for local map amendments that you can file your
8 application. It doesn't say that for special exceptions.

9
10 Councilmember Berliner,
11 Okay. Now, I understand better the legal issues, let me roll back to the policy issues.

12
13 Francoise Carrier,
14 Okay.

15
16 Councilmember Berliner,
17 From your perspective, is there a policy, is there a reason to make a distinction as a
18 matter of policy as you understand this conversation between the two, setting aside the
19 legal issues?

20
21 Francoise Carrier,
22 You know, I'm not a policy maker, but I'll give it a shot, take a shot at it. I don't think so. I
23 mean, I think to the extent that the Council would like to be able to have a larger context
24 for an abandonment decision, I think that's equivalent in both cases.

25
26 Councilmember Berliner,
27 Okay.

28
29 Francoise Carrier,
30 In one way the special exception context is simpler. If you're considering, if you adopt
31 the resolution that has been proposed, the Council will be assuming a very high duty to
32 avoid any kind of communication regarding the roadway abandonment that could be
33 considered an ex parte communication related to the rezoning. Mr. Leventhal raised this
34 prospect. That exists whether or not you adopt this resolution. It becomes more intense
35 if you intend to decide the two matters on the same day. Your obligation to make clear
36 that in the rezoning you were relying only on the record that the Hearing Examiner
37 created becomes, I think, a larger burden than if you do the abandonment in January
38 and the rezoning several months later. I think it's not impossible to do both in a way that
39 is legally sustainable. I think it is more difficult.

40
41 Councilmember Berliner,
42 In effect, it would go back to the Chair and the road code Bill, it would raise questions as
43 to whether or not you could have any conversation with respect to an abandonment.



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1 Francoise Carrier,
2 I agree. Now, the special exceptions, it's different.

3
4 Councilmember Berliner,
5 It is an ex parte.

6
7 Francoise Carrier,
8 I agree. The Board of Appeals would not be party to any discussions about the
9 abandonment. So you would not have the same restrictions. It would be very clear that
10 they rely only on the Hearing Examiner's record. So, in that respect, it's easier in the
11 special exception context.

12
13 Councilmember Berliner,
14 But if we were to adopt this, it would certainly be something that we should consider as
15 to whether or not to revisit the issue of whether or not an abandonment is an ex parte
16 communication or not if we adopt this policy. Wouldn't it call that into question?

17
18 Jeff Zyontz,
19 Well, an abandonment is not ex parte.

20
21 Councilmember Berliner,
22 I understand now it isn't, but if we were to adopt the policy that we are currently, the
23 PHED Committee's recommendation, it would seem to me that there would be an
24 argument to be made that we should reconsider that issue and make it ex parte
25 because it would be so difficult to have any conversations about road abandonments
26 that would not be tied up unless it is not within, a road abandonment that is not
27 otherwise encumbered with either a special exception or other hearing.

28
29 Francoise Carrier,
30 Yes. I'm sure there are many that don't involve a zoning case.

31
32 Councilmember Berliner,
33 Right. Got it.

34
35 Jeff Zyontz,
36 And certainly somebody who's attuned to both issues would want to introduce a lot of
37 information on the facts and circumstances around the road abandonment in the zoning
38 case so that they don't have this situation.

39
40 Councilmember Berliner,
41 Right. Right.

42
43 Jeff Zyontz,
44 Knowing the procedure makes that easier.



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1
2 Councilmember Berliner,
3 Okay. Thank you, Council President.

4
5 Council President Knapp,
6 Councilmember Elrich.

7
8 Councilmember Elrich,
9 So Ms. Carrier, you didn't ask for this. This wasn't at your request.

10
11 Francoise Carrier,
12 No. This was not at my request.

13
14 Councilmember Elrich,
15 So, Jeff, who asked for it?

16
17 Francoise Carrier,
18 I don't really care whether you do it or not.

19
20 Councilmember Elrich,
21 I realize that. So, where did your request come from?

22
23 Jeff Zyontz,
24 I consulted with Glenn Orlin on the road abandonment issue and went forward.

25
26 Councilmember Elrich,
27 I guess I'm having a hard time understanding the nexus of a case that was downstairs in
28 front of the Hearing Examiner who had no problem with the process and how it became
29 a problem upstairs. This, you know, this just, this doesn't make me comfortable, that a
30 problem, that something that wasn't a problem down there became a problem upstairs
31 that we decided that we needed to address from the person, the professional hearing
32 the case didn't think we needed to address it. This isn't at her request. That's just a
33 concern I have. The other issue, the arguments on abandonment aren't the same as the
34 other arguments you're hearing, are they?

35
36 Francoise Carrier,
37 You know, I don't know very much about the abandonment process. I understand that
38 there is, the Council has to consider whether the road is useful for public transportation,
39 and then there is a public interest prong. They are, there is a public interest prong to the
40 zoning cases as well whether the road is useful for the public transport is not an issue in
41 rezoning and I don't believe anybody would try to present evidence on that in a zoning
42 case.

43
44 Councilmember Elrich,



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1 I mean, it seems to me you hear two fundamentally different cases when you're hearing
2 the abandonment and when you're hearing a rezoning case and the arguments, you
3 know, the arguments that I saw made related to access of emergency vehicles, you
4 know, does the County need this road, you know, for the services its providing, not does
5 this neighborhood think this project is too dense, we don't like the project. I mean, the
6 kind of question that we're going to be asked, that we'd be asked to decide is whether,
7 do we like, you know, do we think this project is suitable and compatible and everything
8 else. I see these as two different things. My concern frankly is that Councilmembers
9 may well fall in love with the project. I think there was a project in Silver Spring that
10 people fell in love with and something got abandoned, and then we all looked at it later,
11 and said I wish that abandonment possibly hadn't happened, it created great strife for
12 some small businesses there. I mean, I think, this allows us to conflict two things that
13 ought to be separate in our minds. And I would be happy leaving it to the discretion of
14 the Hearing Examiner. I don't see any need to change it. If a person who does this
15 doesn't see a need to change it, I don't see a need to change it. If we're going to change
16 it, it seems to me you ought to change it in the direction of a clear separation of what
17 you're thinking about rather than forcing us, as Roger suggested, to be very, very
18 careful in separating out these two things. I mean, I understand that we can say that
19 intellectually, but I don't know realistically that's how our brains work. I mean, I think that
20 I, when I, when information. [laughter]. We can do an experiment. I just, I don't want to
21 experiment on our ability to separate out what information I can think about when I'm
22 thinking about something else when I already have that information. I would prefer to
23 either do nothing or to lay it out as an alternative what the Committee came to. But I
24 won't beat this thing to death. I assume we'll vote at some point.

25
26 Council President Knapp,
27 We've got one more comment, I hope. Councilmember Leventhal.

28
29 Councilmember Leventhal,
30 I think Mr. Elrich is going in the same direction I was going. I don't think we need a
31 policy here. I think it's a mistake to set policy based on one problem, one dilemma, one
32 case. I appreciate the good efforts of Mr. Zyontz and Mr. Orlin to tell the Council what
33 the Council needs to take up but I don't actually think the Council needs to take this up.
34 I think the Hearing Examiner will deal with her docket and things will come to us in an
35 orderly manner as they always have. There has been a Hearing Examiner Office for
36 many, many years in Montgomery County and there hasn't been a policy in this regard.
37 So I can envision situations where dealing with the road abandonment first would pose
38 a problem, and I can envision situations where dealing with the local map abandonment
39 first would pose a problem. I don't think we ought to be setting a blanket policy here. So,
40 I could state that in the form of a motion, we could refer it back to Committee, or we
41 could table it, or Duchy's ready to offer a motion. No?

42
43 Councilmember Trachtenberg,
44 Yeah. You make the motion, I'll second it George.



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Councilmember Leventhal,

Well, I mean, I just would sort of moot the whole thing. I so, whatever that, we could just move to table, I guess.

Council President Knapp,
Move to table or vote it down.

Councilmember Leventhal,

Okay. A motion to table is non debatable. So, if we're ready to end debate now, I mean, I want to be courteous to my colleagues.

Council President Knapp,
Yeah, you're the only light on. I move to table.

Councilmember Trachtenberg,
Second.

Council President Knapp,
All right. We have first motion to table. We have a second. All in support of the motion to table, indicate by raising your hand. Councilmember Leventhal, Councilmember Ervin, Council Vice-President Andrews, Councilmember Trachtenberg, Councilmember Praisner, and Councilmember Elrich. Those opposed? Councilmember Floreen, Councilmember Berliner, and myself. The motion to table carries. All right. We are moving along expeditiously. Our next issue before us is Consideration of Hearing Examiner's Report and Recommendation. Application number G-875. Mr. Grossman.

Marty Grossman,
Good afternoon, Mr. President. I bring you something hopefully less controversial.

Council President Knapp,
Maybe shorter anyway.

Marty Grossman,
Definitely shorter. This involves a local map amendment application to reclassify 4.26 acre parcel of land from the R-90 zone to the PD-35 zone. It's property known as parcel 146, Shady Grove Metro, and it's located at Yellowstone Way on the south side of Redland Road. The applicant proposes to develop the property with 156 residential units which includes three single family detached units, 36 single family attached units, and a 117 unit multi-family four story building which will have 20 MPDUs. There was no opposition here. The only real issue was a legal one involving the alternative review committee and whether a meeting of it was required. All the parties felt it was not required, technical staff felt it was not required, and I looked at the issue and felt it was



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1 not required also. I recommend granting the rezoning application as did technical staff
2 and the Planning Board.

3
4 Council President Knapp,
5 Excellent. I see no comments. We need a motion to approve the Hearing Examiner's
6 Report and Recommendation.

7
8 Councilmember Leventhal,
9 Move approval.

10
11 Council President Knapp,
12 Moved by Councilmember Leventhal.

13
14 Councilmember Trachtenberg,
15 Second.

16
17 Council President Knapp,
18 Seconded by Councilmember Trachtenberg. Madam Clerk, if you would call the roll.

19
20 Council Clerk,
21 Mr. Elrich.

22
23 Councilmember Elrich,
24 Yes.

25
26 Council Clerk,
27 Mr. Praisner.

28
29 Councilmember Praisner,
30 Yes.

31
32 Council Clerk,
33 Ms. Trachtenberg.

34
35 Councilmember Trachtenberg,
36 Yes.

37
38 Council Clerk,
39 Ms. Floreen.

40
41 Councilmember Floreen,
42 Yes.

43
44 Council Clerk,



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1 Mr. Leventhal.

2
3 Councilmember Leventhal,
4 Yes.

5
6 Council Clerk,
7 Ms. Ervin.

8
9 Councilmember Ervin,
10 Yes.

11
12 Council Clerk,
13 Mr. Berliner.

14
15 Councilmember Berliner,
16 Yes.

17
18 Council Clerk,
19 Mr. Andrews.

20
21 Councilmember Andrews,
22 Yes.

23
24 Council Clerk,
25 Mr. Knapp.

26
27 Council President Knapp,
28 Yes. The Hearing Examiner's Report is approved nine to zero. Thank you very much.

29
30 Marty Grossman,
31 Thank you, Mr. President.

32
33 Council President Knapp,
34 And we now turn to our last item of the day, Oral Argument and Consideration of
35 Hearing Examiner's Report and Recommendation for Development Plan DPA 05-1.
36 This came before us I believe it was three weeks ago or so. We have oral argument on
37 the base of three elements, notice given in the DPA process, conformance to the
38 master plan, and whether the DPA should be denied based on an age restriction of age
39 55 and older. The applicant will present argument first and may reserve a portion of time
40 for rebuttal if the reservation is made at the beginning of the oral argument. Oral
41 argument must be confined to the evidence of record as compiled by the Hearing
42 Examiner. Who's our scorekeeper?

43
44 Jeff Zyontz,



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1 For time?
2
3 Council President Knapp,
4 Well, time and what's on the record? Okay.
5
6 Francoise Carrier,
7 On the record.
8
9 Council President Knapp,
10 Great. And everyone has how long? What did we decide?
11
12 Jeff Zyontz,
13 Twenty minutes total, the applicant can reserve time for rebuttal, and I think you're going
14 to?
15
16 Bob Harris,
17 Yes.
18
19 Council President Knapp,
20 Okay. Twenty minutes for each?
21
22 Jeff Zyontz,
23 How much time do you wish to reserve?
24
25 Bob Harris,
26 I'm going to try to make it ten and ten. We'll see how good at predicting I am.
27
28 Jeff Zyontz,
29 Okay. All right. So ten minutes for rebuttal will be reserved, and then the opposition
30 goes forward with 20 minutes. They're going to divide their times equally between the
31 two speakers.
32
33 Council President Knapp,
34 Okay. Very good. Everyone clear on where we're going? Okay. Mr. Harris.
35
36 Unidentified
37 Is there a rebuttal of the rebuttal?
38
39 Council President Knapp,
40 No. We have to end it someplace.
41
42 Jeff Zyontz,
43 You get to rebut because you get to hear.
44



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1 Council President Knapp,
2 Right. Okay. Mr. Harris.

3
4 Bob Harris,

5 Good afternoon. For the record, Bob Harris, of Holland and Knight representing the
6 applicant. First of all, I'd say, certainly we support the recommendations of the Planning
7 staff, the Planning Board and the Zoning Hearing Examiner to approve this
8 Development Plan Amendment. This is an amendment to an approved Development
9 Plan for a large mixed use community known as Greenway Village but also known as
10 Aurora Hills which is the marketing name. Greenway Village is well under construction
11 today although not in the area immediately around where this Development Plan would
12 be amended. This plan is proposing to add 100 units of senior housing in the village
13 core area of Greenway Village. Greenway Village itself is part of a 1,000 acre area of
14 the master plan known as the Newcut Road neighborhood. The village core area, as I
15 say, is not built nor the surrounding area immediately around it, so this is sort of a field
16 right now. The applicant's goal here is to respond to changing demographics in the
17 County with the aging of the population and the growing demand for senior housing with
18 a project that will provide special features for seniors and will improve the mix of uses in
19 the approved village core. A little background for you. The Clarksburg Master Plan
20 divided the planning area of Clarksburg into eight neighborhoods. One of those is called
21 the Newcut Road neighborhood. It's about 1,000 acres, technically 1,060 acres. Within
22 that Newcut Road neighborhood is a 373 acre project, the Greenway Village or Aurora
23 Hills project. That's the subject here. As I say, it's been zoned, a Development Plan's
24 approved, and it's under construction. The master plan for the Newcut Road
25 neighborhood, the 1,000 acres, calls for a variety of residential uses throughout it along
26 with a mixed use village core that includes higher density residential uses within that
27 core area. It allows a total of 4,660 total units within the whole Newcut Road
28 neighborhood, and it does call for senior housing in general, that is the master plan
29 does, it doesn't identify any specific locations for that, but it does identify the need for
30 that. The master plan for the 373 acre Greenway Village portion, itself, recommends a
31 density of up to seven units per acre under the PD zoning. Now when the developer
32 came in, they actually applied for a lower density than that. Only the PD-4 zoning, four
33 units per acre, rather than seven units per acre with the bonus densities that are
34 allowed, that would allow 1,825 units within Greenway Village. Again, part of the
35 broader Newcut Village. That zone also calls for a 25% multi-family mix within the PD-4
36 zone. This case arose, for those of you who have been on the Council for a while,
37 because the original Development Plan included more retail area, more retail square
38 footage in this area. The developer had set aside 17 acres for the village core, and
39 originally wanted 200,000 square feet of retail in that. The Council denied that, cut it
40 back to 109,000 square feet. And so the developer was left with essentially three acres
41 more land than they could use for the retail. They didn't require all of that land. They
42 went out to the community to discuss what should be used, what that area should be
43 used for, and the idea of age restricted housing arose as the best use. That was several
44 years ago. They had the support at that time of the Clarksburg Civic Association and the



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1 community in general and they started down the path. Well a lot of things happened in
2 Clarksburg in between then and now and a lot of things got delayed, so this plan was
3 fallow for a while but we were able to get it back on the agenda and go to the Planning
4 Board earlier this year and to the Zoning Hearing Examiner, and we're pleased, as I
5 say, to have the support from the Planning staff, the Planning Board, and the Zoning
6 Hearing Examiner. I'm disappointed always when there's opposition, and we do have
7 two people who did oppose it at the ZHE hearing. As I understand it, they've raised
8 basically three issues that you've agreed to discuss today. One is notice of the
9 application, two is the master plan recommendations, and thirdly is the age of the units.
10 I'm not sure whether I mentioned, we are proposing to use the 55 plus age limit that is
11 under the federal legislation. In terms of the notice, I'm not sure really what that issue is
12 so I'll just have to respond to it. As I see it, we met all of the requirements for notice and
13 we've had a lot of – on this so I don't really know what that's about. The master plan, I
14 think I do know what that is about, and I'd like to briefly address that. Because I think
15 there has been some confusion in the community that may have led to their position. I
16 think the Zoning Hearing Examiner has laid it out very clearly in her report. But I'd like to
17 briefly review that with you. You have to sort of parse this into the overall Newcut
18 neighborhood and into the Greenway Village area. The master plan calls for 4,660 units
19 in the Newcut neighborhood. With this project being approved, this 100 units, we come
20 to 4,183, well within the density for the Newcut neighborhood. The PD zoning for
21 Greenway Village allows, as I said, 1,825 units. This would bring that density to 1,430,
22 still well within it. As I said earlier, that density itself was lower than what the master
23 plan recommended because – with the PD-4 zoning. The zoning for the Greenway
24 Village also addresses the mix as does the master plan, a mix of unit types beyond the
25 density. The zoning requires a minimum of 25% multi-family in the PD-4 unless the
26 Council waives it. This would bring the mix in Greenway Village to 24.3%, slightly below
27 the minimum, but effectively if you approve this you are waiving the minimum of 25%
28 which is effectively what you did before when you approved the original Development
29 Plan. The master plan also has a guideline for the overall Newcut neighborhood, the
30 broader area, of 20% multi-family because some parts of that were going to be less
31 dense than the village core area. With these 100 units approved as multi-family
32 housing, that percentage would be 19.5%, so it's within the master plan guideline of
33 20% and it meets the zoning as well. Bottom line, we think it fits perfectly within what
34 the zoning and the master plan calls for. In terms of the age, as I said, we proposed to
35 use the 55 plus age restriction for a number of reasons. We don't have to. We could
36 build these as just multi-family units if you approve them. We don't need the bonus
37 densities that come with senior housing in the PD zones. We're building these as multi-
38 family units but agreeing voluntarily to restrict them to age because that's the
39 demographic profile we're shooting at. We think that the aging of the population is
40 creating a growing demand. We don't see it immediately today, but in a not too distant
41 future as people my age, your age, who might live in Clarksburg, their parents are aging
42 and they want a place for them to live nearby. We see that as a great opportunity, and
43 there's no supply planned in this area of Clarksburg. To my knowledge, this is the only
44 senior housing planned in the whole area. So, we're trying to incorporate those things



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1 and do them in a village core area where the shopping is convenient, where it adds to
2 the diversity in the core and to the mix of uses, and I think it compares favorably with
3 some portions of Montgomery Village, town of Columbia, Germantown has senior
4 housing close to retail like that. And we think it will be a good transition. So, we worked
5 with the Planning staff and the Planning Board to make various changes as it went
6 through the process. We agreed to a number of binding elements that are before you,
7 and we ask that you support it as did the Planning Board, the Planning staff, and the
8 Zoning Hearing Examiner. Thank you. Thank you.

9
10 Council President Knapp,
11 Okay. Mr. Majewski.

12
13 Paul Majewski,
14 I'm Paul Majewski. I live at 12233 Piedmont Road, Clarksburg, Maryland. I'm a past
15 President of the CCA, Clarksburg Civic Association. I speak on my own behalf and that
16 of the CCA. I'm sorry. I speak on my own behalf and as a CCA Planning Committee in
17 seeking your remand of DPA 05-1. Thank you for the opportunity to participate in this
18 oral argument. First, I will concentrate on the issue of conformance to the master plan.
19 Excuse me, primarily the height. After that, I will briefly address the DPA process and
20 the age restriction issue. I'll finish with a summary and suggest possible height
21 conditions that the Council might request upon remanding the DPA back to the Hearing
22 Examiner and staff. We are talking about small town Clarksburg, not the down County,
23 not a Silver Spring high-rise. A building that is 400 feet long and 50 feet high is out of
24 place for the center of an overwhelmingly residential neighborhood in Clarksburg. As
25 the staff's report quotes the, excuse me, as the staff's report quotes the master plan
26 discussion of the Newcut Road neighborhood, higher density residential uses, retail
27 services, office, and civic uses are clustered in the neighborhood center to promote
28 visual identity for the center, a vertical mix of three to four story buildings would be
29 appropriate. This DPA calls for a building that is five stories along Little Seneca
30 Parkway. And apparently, four stories at the building's main front entrance off the
31 access road into the retail center. The fifth story makes the building 25% bigger than the
32 maximum number of stories in that master plan paragraph. That amount of deviation
33 from the master plan is grounds enough to reject the DPA in its present form. But there
34 is much more height problem with the DPA. Attempts should be made to have the
35 height in feet echo the master plan sentiment. The DPA would allow the building to be
36 55 feet high. Why so tall? Here is my thinking. Four times, I'm sorry, four stories times a
37 generous nine foot per story is 36 feet. An additional five feet for a ten foot roof gives 41
38 feet. For the exceptional five story building, add another generous nine feet, giving 50
39 feet, not 55 feet. Such an exceptionally tall building height might make sense to you and
40 me for some circumstances. The example that I can come up with where it might make
41 sense is if the house is set in the hill, if it were at the bottom of the hill or the middle of
42 the hill and measurement of the height would be affected by the fact that the road that
43 you're measuring it against is below the level of the house. So, you would need two
44 conditions, it seems to me to justify an additional height. One would be, as I just said,



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1 that without the addition of height the distance from the threshold to the rooftop height,
2 to the rooftop would be too small. Condition two would be that the hill continues to rise
3 such that any additional height is barely noticeable because the house is sort of built
4 into the side of the hill. The house height doesn't unduly, in that case, the house height
5 wouldn't unduly restrict views around the hypothetical house because there is a hill
6 behind the house anyway. Neither of these two elements has been demonstrated in this
7 case. In fact, a measurement point is roughly at the top of a long steep slope. Every foot
8 added to the top of this building will be noticed in every direction. This is one of the
9 worst spots to choose to violate the master plan recommendation of a maximum of four
10 stories much less allowing additional footage. There is yet more height problem. In the
11 record, a reasoning allowing the height is that it is compatible with other buildings
12 nearby that will be that tall. That reasoning in itself is not sufficient. The hearing record
13 does not demonstrate that leap. If a few buildings are given an exceptionally tall height,
14 could that be because of an exceptional topographical situation for those buildings.
15 Such exceptions should not become a precedent for violating the master plan on a wide
16 spread basis. It did not justify a 55-foot height for this massive building. There is still
17 much, much more to this height violation. Exhibit 61b in this Development Plan, this is it
18 here. The single point of measurement of the building height is along a narrow edge of
19 the building. This black [inaudible] the only point of measurement for the height
20 restriction and while I'm standing here, this is Little Seneca Parkway that slopes down.
21 This is the approximate high point of the area. The entire thing, as this thing shows,
22 slopes down to this point which is, at this point is about 56 feet lower than that point.
23 This point is 26 feet lower than that point. So, I'll repeat a little bit of what I just said.
24 Little Seneca Parkway slopes down 26 feet along those 400 feet from the point of
25 measurement. A corner of the building that is 360 feet from the point of measurement is
26 closer to Little Seneca Parkway sidewalk, 22 feet than the point of measurement is to
27 Aurora Hills Drive. The point of measurement here, it's 25 feet to the sidewalk. At this
28 point where there's no measurement, is 22 feet. The reasoning on the record justifies,
29 oh sorry, I skipped something. So, with a maximum of 26, of 55 feet for that building, if
30 you add that additional 26 feet that the road is lower, you get, this plan allows that
31 building to be 81 feet at that point. The reasoning on the record justifies the fifth story on
32 the Parkway side without considering users of the Parkway and its sidewalk or uses of
33 the greenway or houses and residents across the greenway and without considering
34 that 26 foot slope. Turning to the retail side of the building, the reasoning on record
35 justifies the four stories on the retail side but doesn't consider a slope. As I said, for the
36 750-foot length of the retail center, there's a 56-foot drop so there will be sloping within
37 the retail center with this building looming over it. Yet the retail center is not at site plan
38 yet. My understanding is that we don't know yet the final elevations of internal
39 roadways, parking lots, or buildings here. The DPA allows the building to loom over the
40 retail center, probably not by 81 feet, but in my opinion, it would loom more than a 55-
41 foot building over on flat land would. If the Council wants the master plan heeded to
42 avoid a massive structure in a residential neighborhood, it must act now. Waiting for a
43 site plan to further limit the height is not the strategy of an active Council. If the Council
44 wants to trust that somehow the site plan process would have 100% common sense,



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1 goodness, fairness, correctness, and a lawsuit free environment, my response is yeah
2 right. As busy as we are, a site plan could sneak through without our sufficient
3 participation. As for the notice given in the DPA process, I'm especially concerned about
4 the changes made to the Development Plan in the Hearing Examiner process about
5 which there is no chance for community input. I refer to this exhibit which rightly corrects
6 a parking problem, but it was done at the last minute, and it could present other
7 problems which the community has not had a chance to look at. The final issue of this
8 testimony is the age restriction, why not 60, 62 or 65? If the age limit is kept at 55, the
9 units do not offer nearly enough social benefit. Can I ask how much time I have left?

10
11 Francoise Carrier,
12 Just under ten minutes. Ten minutes goes to the other person.

13
14 Paul Majewski,
15 Could I borrow one.

16
17 Cherian Eapen,
18 Yeah, sure.

19
20 Paul Majewski,
21 Can I come back.

22
23 Cherian Eapen,
24 No, that's okay, take your time.

25
26 Paul Majewski,
27 Okay. The final issue is the age restriction. The DPA is an attempt to fill a hole created
28 when the Council rightfully rejected commercial on that site. But this DPA is trying to fill
29 a few round holes with a hundred square units. The DPA would change the mix from the
30 approved Developmental Plan significantly. The master plan does not call for this
31 density, 100 acres on a three acre site in the Newcut Road neighborhood. Even if you
32 bring the height down to 45 feet, you could expect four-fifths of those 100 units, 80
33 units, that's 27 units per acre for those three acres. What could justify this density?
34 Perhaps a true senior housing could come close to justifying it. As I argued in the
35 hearing what is absent from the application is an accounting of what the average age of
36 the tenants for their proposed building would be as opposed to one with no restriction,
37 maybe one with a no children restriction, or one with a 62 and over. I would like to have
38 built at that site a true senior housing of a size, intensity, and height as the master plan
39 recommends and in step with the already approved and relied upon Development Plan.
40 As noted at the hearing and in March, the CCA opposed this DPA because of height,
41 traffic, parking, and insufficient benefit for the added density. CCA members have
42 argued that an age 55 restriction is not enough benefit. In summary, the DPA would
43 allow height conflicts with the master plan and a three acre super dense abnormality
44 with insufficient trade-off benefit. I suggest that the Council remand this plan, and there



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1 are options for what they might want to ask to be done during the remand, the age
2 restriction, limit to four stories, maximum height at 45, 50, 51. This is your chance, you
3 pick it. You could say maximum 55 on the west, lower on the east. That would be the
4 west, I'm sorry. The height limit, you could ask that the height limit be measured from
5 multiple locations instead of just the one location which creates a real abnormal
6 situation. You could ask that it be measured from more places. As a rebuttal, support of
7 the CCA, that was brought up in the hearing, and I said, well, I was at all the meetings. I
8 don't remember a vote on the record. I particularly did support age restricted
9 development before I saw the size of it. Thank you.

10
11 Cherian Eapen,

12 Good afternoon. My name is Cherian Eapen. I live at 23118 – Road in Clarksburg. A
13 resident of Greenway Village, also called Aurora Hills, and I thank you all for this
14 opportunity to present oral arguments before you today. Before I present, I would like to
15 disclose I am a Montgomery County Planning Department employee. I have taken off
16 time from work to be here today. As a resident of the community directly affected by this
17 DPA, my testimony reflects my own personal opinions and views regarding this DPA. As
18 I mentioned, I'm an elderly resident of Greenway Village and of Aurora Hills of the new
19 Clarksburg, and I believe that residents who moved into Clarksburg over the last five
20 years, as the residents who are still moving in have as much a stake in the build out of
21 our neighborhood and of Clarksburg as the community whose collective spirit put
22 together the 1994 Clarksburg master plan. To that end, I request that the District
23 Council honor decisions made by many reasoned residents in our neighborhood as –
24 new and old Clarksburg community who depended on the Clarksburg master plan to
25 make the quality of life decisions. The District Council must also honor its own past
26 action in 2001 to deny additional commercial density within the commercial center for
27 the Newcut Road neighborhood. I therefore request that the District Council deny the
28 requested amendment to add additional multi-family residential units to Greenway
29 Village for the following reasons. I believe if the DPA is granted, it clearly violates
30 master plan limitations and density within the commercial center which is limited in the
31 master plan to 109,000 square feet of retail only, and with some office uses and – part
32 of the retail center. There is no provision in the master plan for additional density within
33 the commercial center, including housing. Approval recommendations by the Planning
34 Board staff, the Planning Board, and the Hearing Examiner clearly disregard the --
35 balance the master plan places on each of Clarksburg commercial areas and
36 recommend an increase in multi-family housing within our neighborhood commercial
37 center. Though the master plan does support additional density within the neighborhood
38 as Bob mentioned, I believe the location chosen for the proposed use within the
39 commercial area is not acceptable and clearly against the master plan. I would like to
40 make it clear that I am not opposed to age restricted housing but I am opposed to the
41 location chosen for the proposed use. On a three acre parcel within the 17 acre
42 commercial center, and when you consider the overall 1,060 acre Newcut Road
43 neighborhood, there is plenty of opportunity to have thought this through and placed it at
44 some other location. I believe if the DPA is granted the District Council will be approving



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1 additional multi-family residential units and an associated gated parking area within our
2 commercial center which will seriously put at risk the viability of creating a future a
3 mixed use, street oriented, walkable, transit oriented, commercial center in our
4 neighborhood as recommended in the master plan primarily due to the challenges the
5 proposed multi-family residential building and its dedicated parking area will pose in
6 developing an integrated center. Again, if the DPA is granted, with a building that will be
7 four to five stories high, that will be clearly in violation, again, of the master plan which
8 recommends a vertical mix of three to four story buildings within the center to promote
9 identity for the center. With its massing and height the proposed building will challenge
10 the basic principles that guide the design and the traditional commercial center which
11 we all look forward to and will not provide appropriate transition to the rural edge from
12 our community. If the DPA is granted, it will increase the mix of multi-family units and
13 decrease the mix of single family attached and single family detached units within the
14 subdivision, within our subdivision to below the respected ranges recommended in the
15 master plan adjustment also. And our, in my view, it violates the master plan – this. My
16 request is that the applicant look at the subdivision on its own merit because the PD
17 zone requires that it be met for -- doesn't talk about the whole neighborhood and
18 Clarksburg, as a different zoning altogether with R-200 MPDU, TDR3 and TDR4 zones.
19 Additionally the area adjacent to the commercial center is already approved, or planned
20 to be built. It's several multi-family and two over two units. Contrary to the finding made
21 by the Planning Board and the Hearing Examiner, the proposed DPA does not bring in a
22 greater diversity to the mix of existing approved or planned residential units within the
23 neighborhood or in the vicinity of the commercial center. If the DPA is granted, the
24 District Council will be approving additional multi-family residential units within our
25 commercial center that will preclude placing of much needed public uses within the
26 approximately 4,200 resident neighborhood, such as a day care center, a house of
27 worship, a transit center potentially, a neighborhood common, et cetera. I believe over
28 the long-term families within the Greenway Village and Clarksburg Village communities
29 will benefit immensely from these types of uses that can better fit the center and the
30 neighborhood. Finally, I believe any decision on this DPA at this time by the District
31 Council will not be timely given the start of construction of Greenway Village phase four
32 immediately adjacent to the center, the pending site plan for Clarksburg Village phase
33 two that will be built right next to the south of the commercial center, and the possible
34 future development of other active residential facilities nearby. To conclude my oral
35 arguments, I respectfully request that the District Council deny this amendment which I
36 argue is not appropriate within our neighborhood commercial center and is not
37 supported by the Clarksburg master plan. Again, thank you for giving me this
38 opportunity.

39
40 Council President Knapp,
41 Thank you very much. Mr. Harris.

42
43 Bob Harris,
44 I have to go to the board here a minute, if I may.



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Council President Knapp,
11 minutes.

Bob Harris,

Thank you. First of all, I'm sorry, in terms of the parking that Mr. Majewski mentioned, you can, the, this is the entire Development Plan area, the Development Plan Amendment concerns this upper corner. Originally, we didn't have separated parking for the age restricted housing and the community and the Planning Board said that they wanted parking to be segregated for these folks so they had guaranteed parking. That's the only change we made during, you know, the process at the end so that all of the parking is here. Some of it was over here before. But now it got moved to an area that is controlled by a gate, or will be controlled by a gate, and is completely segregated for those folks. The parking for the retail area will be separate and distinct, and it will meet the code requirement. So, a very minor change to address comments that we heard from the community and others. That's, to my knowledge, the only change what was made to the binding elements. In terms of the height, actually I do have to come back to the board, excuse me. The yellow exhibit shows what I was talking about as well. Again, this is the area we are talking about here at the very bottom. It's maybe a little hard to read from back there but these were color coded to show the heights of buildings that are across from and near the project. This, I call it maroon or whatever, is 55 feet. These are buildings that are already approved at 55 feet across from the front of the project. The pink, if you will, is 50 feet tall, and then the blue is either 40 or 45, I can't, I guess that's 40 feet. So, this is a combination of multi-family or two over two product that's here just across from where that is and townhouses that are within that block. It's important to keep in mind as well what else you have here. The grade, as Mr. Majewski said, is dropping off in this direction, but what you have here is Little Seneca Parkway and then at least 800 feet through an open space area over to housing that is west of that so that the four story portion faces these folks that are already going to be four stories themselves and already going to be 55 feet or 50 feet. As Mr. Majewski said as well, the topography is coming down, as the record indicates, these units are built on a ground that is six feet higher than this, where we're proposing. So, these 55-foot units will be taller than the 55 foot multi-family senior housing that is here and the ones that are 50 feet will still be a foot taller as well. You know, absolute elevation there. We believe that as the staff and the Planning Board did, that this is an appropriate site for that type of height given the adjacencies. The, as I said earlier, the units that are shown on there, while they're approved, they're not built as well. So that anybody moving into those units will know what is proposed across the street there, and it won't be a surprise. Many times when we're doing senior housing projects the problem is you're trying to retrofit them into a community where people already live. That's very difficult. Frankly, we thought we had a great idea, and I still think we do here by coming in with the plan early in the process so that people know what is going on there. It will be four stories to that side. The master plan says that three to four stories would be appropriate to promote visual identity in this area. They wanted height basically. It didn't say



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1 absolutely limited to four stories. I think, given the master plan guideline, more would
2 even be possible. We are going to be four stories to that side. The only place where it
3 would be five stories is at the back where the grade is dropping. I think that the Zoning
4 Hearing Examiner made the appropriate findings at page 32 of her report where she
5 finds this to be compatible and appropriate and within the master plan. I think, we would
6 like to, we originally proposed it for 120 units, but in discussions with the community and
7 others, dropped it to 100 units, which is getting pretty much near the bare minimum. If
8 we were to do 100 units and make it a lower building, it would be a broader building,
9 and a bigger building which was one of the things that Mr. Majewski is, you know,
10 concerned about. So, we think it's the appropriate way to do it. By comparison, this very
11 same situation has been done before in Germantown, on Klauper Mill Road, there is a
12 senior housing building there that is four stories to the front, five stories because the
13 grade is dropping off out the back, and it's even closer to single family residential units
14 than this will be. It's directly adjacent to them. But it does serve as a good buffer
15 between the retail.

16
17 Francoise Carrier,
18 Mr. Harris, I have to say that I'm not sure all of that is in the record.

19
20 Bob Harris,
21 Oh, okay.

22
23 Francoise Carrier,
24 We know that there was a housing thing, we don't know anything about.

25
26 Bob Harris,
27 Okay. Okay. I withdraw that. I think that's all I have. We support the Zoning Hearing
28 Examiner's recommendations.

29
30 Council President Knapp,
31 Thank you very much. We have a couple of Councilmember questions. Councilmember
32 Berliner.

33
34 Councilmember Berliner,
35 As I was listening to the arguments of the opponents, a lot was made with respect to the
36 master plan. Would you summarize your view with respect to this proposed amendment
37 and its relationship to the master plan?

38
39 Francoise Carrier,
40 Sure. The, I think the proposed use is consistent with the variety of uses that the master
41 plan recommended for this, for the neighborhood. There is an, you know, an
42 inconsistency. I felt it was a small enough one that it did not prevent a finding of
43 substantial compliance. The master plan calls for three to four story buildings in the
44 retail area. There is, you know, one could interpret that a couple of ways. This building



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1 is on the edge of the retail area. It may be that the master plan's intent was that when
2 the retail area is designed, which it has not been, that has been left for site plan, that
3 when they design the retail area and those buildings are hopefully designed to present
4 some kind of cohesive image, that those buildings should be three to four stories. This
5 building on the edge of the retail core will certainly affect the sort of the general visual
6 image. It will not be part of the retail core. I sort of gave the opposition sort of the benefit
7 of the doubt that the three to four story recommendation should apply to this building
8 because it's on the edge of the retail core. And you know, four to five stories is a
9 deviation from three to four stories, but not a huge one in my view, particularly given
10 that the side facing the retail core would be four stories. The fifth story would only be
11 visible from the Little Seneca Parkway side. It's true that at the zoning stage, we don't
12 know precisely how the building would sit. We don't know how high up it would be when
13 you get to sort of the southern end of the building where the land is sloping. That level
14 of detail is normally left to the Planning Board to figure out at site plan, and they have
15 the authority to tell the applicant, you know, you have to step down the building or, you
16 know, whatever decisions they feel are appropriate given the higher level of detail that
17 they go into at site plan.

18
19 Councilmember Berliner,
20 With respect to the quote, massing issue and your.

21
22 Francoise Carrier,
23 You know, the massing issue, you know, that's a compatibility question really. It doesn't
24 really go to the master plan recommendations. The building would be most visible to the
25 nearest units which are the ones, I guess I'll go over. It would be most visible to the
26 units that are shown on this tail end of Aurora Hill's Drive. These, the purplish ones are
27 two over two units which have some mass themselves. They have a, they are
28 considered single family attached but they have sort of a multi-family look because of
29 their size. They are already designed to be facing the retail center. So they're not, it is
30 not within what I would call a residential neighborhood. It is a mixed neighborhood. This,
31 you know, to the north of Aurora Hills Drive, it's clearly residential. To the south, it's
32 residential on the edge of a retail center so I think the expectations are different. A
33 massing relationship that would not necessarily be compatible within an entirely
34 residential neighborhood I think is not problematic here, and again, the Planning Board
35 has, you know, they have some control at site plan to effect the ultimate way this turns
36 out. One suggestion I made that the applicants were happy to do was to put in a textual
37 binding element saying there would be residential type features on all sides. I thought
38 that that would help with the massing, any massing issues, that at least you don't have
39 anybody facing a blank wall which can happen with multi-family buildings.

40
41 Councilmember Berliner,
42 Thank you.

43
44 Council President Knapp,



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1 Councilmember Elrich.

2

3 Councilmember Elrich,

4 Return to the massing question just quickly. Are there, I get the impression this is a
5 single monolithic building, 400 feet long or something like that?

6

7 Francoise Carrier,

8 Is that for Mr. Harris or for me?

9

10 Councilmember Elrich,

11 Either of you.

12

13 Francoise Carrier,

14 Mr. Harris, go ahead.

15

16 Bob Harris,

17 I haven't the dimensions, just to be honest with you Councilmember Elrich. I don't know.

18 I think he's measuring it linear feet up here, up here, up here, and around that.

19

20 Paul Majewski,

21 Yeah.

22

23 Bob Harris,

24 I don't know.

25

26 Francoise Carrier,

27 What was the 400 feet Mr. Majewski? Where did you measure that?

28

29 Paul Majewski,

30 From about here to here, 400 feet here, 396, I used, you know.

31

32 Councilmember Elrich,

33 Right. But basically, you're talking about a continuous wall of building. Is that, I'm not, I
34 haven't driven around all of Clarksburg, there's so much to see. So many questions to
35 ask as you drive around up there. Is that much mass in terms of linear, unbroken wall,
36 typical of what I would find up there or would I find other projects that are like that?

37

38 Francoise Carrier,

39 I have to say, that's not in the record. So even if we know, we can't answer your
40 question.

41

42 Councilmember Elrich,

43 Even if that's a massing issue?

44



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1 Francoise Carrier,
2 We don't look at compatibility sort of in Clarksburg as a whole. You know, nobody asks
3 that question. There are no other buildings proposed in this immediate neighborhood of
4 that size. We don't know what the retail buildings will look like so we can't do that
5 comparison. All of the residential buildings that have been approved are, no question,
6 much smaller. Even the clusters of buildings are much smaller.

7
8 Councilmember Elrich,
9 And the commercial property, the governance in the master plan is three to four stories?

10
11 Francoise Carrier,
12 Yes.

13
14 Councilmember Elrich,
15 So do you start a slippery slope even before the commercial property is approved of
16 approving this at five stories?

17
18 Francoise Carrier,
19 Well, I hadn't thought of that. I suppose that's possible.

20
21 Councilmember Elrich,
22 Will everybody be able to come in then and say, well, you've approved five stories here
23 even though the master plan says three or four, I might as well, I can do five here? I
24 mean, are we creating a cascade of what's not intended in the master plan? I mean,
25 these guys know, if they wanted five stories there, they would have put five stories in
26 there. I would have thought.

27
28 Francoise Carrier,
29 I guess it would be, you know, leaving it to the Planning Board to make that call
30 because they, you know, the, when the Development Plan was originally approved, it
31 left the retail area for site plan. The Council delegated its authority over the retail area's
32 design to the Planning Board.

33
34 Councilmember Elrich,
35 But it did leave language in there about three to four stories.

36
37 Francoise Carrier,
38 That was in the master plan, yes. But you know, master plans, we need substantial
39 compliance, and there is room for interpretation in that regardless of whether this is
40 approved, the Planning Board has some leeway. If the Council is concerned about
41 sending a strong signal about, you know, adhering to that three to four stories, then this
42 is clearly an opportunity to do that by not, you know, approving it as it has been
43 submitted.



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1 Bob Harris,
2 Mr. Elrich, we were trying to be very up front with the community. It can be interpreted
3 under the zoning ordinance as a four-story building which meets both the letter and the
4 spirit of the master plan because that's how, you measure height from the front of the
5 building, and the front of the building is to Aurora Hills Drive. We didn't want any
6 Clarksburg issues where somebody said oh it's five out at the back. So we said, it's
7 going to be five out at the back, that's what you're going to see, but it's a four story
8 building.

9
10 Councilmember Elrich,
11 I guess I'm having a hard time separating a four story building that looks, or is a five
12 story building. I mean, either it has four stories or it has five stories.

13
14 Bob Harris,
15 The zoning ordinance parses those things pretty carefully in terms of how you calculate
16 stories and building height which is why we also agreed that it would be 55 feet. That is
17 the same height as the buildings across the street.

18
19 Councilmember Elrich,
20 Some of the buildings.

21
22 Bob Harris,
23 Some of the buildings, yes, correct. Not all of them, yes.

24
25 Councilmember Elrich,
26 Okay. Are there any benefits that are gained by a designation of senior housing? Is your
27 parking requirement the same?

28
29 Bob Harris,
30 We were required by the Planning Board to make the parking the same as if it were not
31 age restricted. The benefits really are for market purposes and providing an
32 environment for the kind of people who want to live in that kind of a building. There are
33 special activities that are arranged in these kind of facilities, trips to various, that sort of
34 thing.

35
36 Councilmember Elrich,
37 No density bonus for being senior?

38
39 Bob Harris,
40 No sir.

41
42 Councilmember Elrich,
43 Okay. Because I would be, you know, I would be concerned since we've had some
44 other problems with some elderly housing where we discovered we didn't have the



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1 parking we needed. I would hate to revisit that here. And when you're talking about 55
2 year olds, I mean, I would assume most of them are still working. It's kind of hard to
3 envision this as a retirement community because I don't think any of us are retiring at
4 55.

5
6 Bob Harris,

7 It's a combination and as the record indicated that. [laughter]. The average age certainly
8 would be well above that because that's the minimum age, and some would work, but a
9 lot would not as well. In terms of parking, the parking that is being provided there is the
10 code requirement as if it were for 30 year olds.

11
12 Councilmember Elrich,

13 Okay. If the, if you, well, without taking your proposal off the map for a minute, you said
14 that the retail project was shrunk.

15
16 Bob Harris,

17 Yes.

18
19 Councilmember Elrich,

20 What was envisioned then to happen on this corner? Were there any, when that
21 decision was made, what was assumed would happen on the corner?

22
23 Francoise Carrier,

24 They left that whole area to be designed at site plan. Those three acres were part of the
25 retail area and it was designated, you know, the language on there says to be
26 redesigned at site plan to be pedestrian friendly and so forth. And from what the
27 applicant related, they can't really use 109,000 square feet of retail, doesn't need all that
28 space, so it was sort of leftover.

29
30 Bob Harris,

31 You have to pass it to the table now.

32
33 Councilmember Elrich,

34 You guys all could have signed this. They want to go home. That's not fair. I guess my
35 last question maybe, you talked about the number of units that could be built and that
36 this fell within that envelope. Is the door now open to exceed that envelope because this
37 parcel wasn't considered as part of the envelope that would generate X number of
38 units? Does the addition of units here, you may fall under the envelope today, but have I
39 left development capacity, that people will say I have the right to develop this by zoning,
40 that will in fact push us over the zoning envelope two or three years from now when the
41 request for that property comes forward.

42
43 Bob Harris,



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1 Let me clarify your premise. This piece of property, this three acres and most of the rest
2 of the retail area is part of the PD-4 zoning on which the density is calculated. Okay?
3 They're not separate and distinct. The units about which I spoke could go anywhere on
4 that property. Okay, so we are in effect eating up part of the excess capacity that was
5 left there before. So we're not creating a problem. If anything, we're reducing that issue
6 for the future. In any respect, it's up to you, the Council because it would require a
7 Development Plan Amendment to build any additional units there beyond what is
8 already approved and what is being proposed today.

9
10 Councilmember Elrich,
11 But will it be as easy for somebody else to come in and say I want X number of units
12 zoned PD-4, I'm in compliance with the master plan and at some point one of those
13 projects is a hundred over instead of several hundred under.

14
15 Bob Harris,
16 Most of, or a good part of Greenway Village is already built out. So it would require
17 demolition of units and that sort of thing and that's certainly off the chart of realism. The
18 other part has already been platted, subdivided, and site plan approval for a lot of it,
19 save this area here about which we were talking. So, yeah, theoretically it's possible.
20 About a one in a million chance.

21
22 Council President Knapp,
23 Okay. Councilmember Floreen.

24
25 Councilmember Floreen,
26 Thank you. [multiple speakers]. I have to ask this question, and I don't know if it's
27 outside, it may be outside the record, but it's a fact somewhere out there. Is this part of
28 the center that is the source of the Clarksburg controversy, the Clarksburg Village
29 Center?

30
31 Francoise Carrier,
32 This is not part of the Clarksburg Town Center, no. At all. No.

33
34 Bob Harris,
35 No.

36
37 Councilmember Floreen,
38 And the retail associated with this is, it's all a different.

39
40 Francoise Carrier,
41 In fact, the reason that the community got the Council to reduce the retail here is so it
42 wouldn't compete with the Clarksburg Town Center.

43
44 Councilmember Floreen,



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1 Yeah, I was wondering about that.

2
3 Francoise Carrier,
4 They're separate.

5
6 Councilmember Floreen,
7 Okay. That's helpful. Now, Mr. Majewski. I'm trying to understand what your concern
8 really is, and do I understand you correctly to say that it is, that the master plan issue,
9 we're only talking about a couple of issues here, the master plan issue is the three to
10 four story issue. Is that the issue from the community's perspective? Or certainly yours?

11
12 Paul Majewski,
13 Yes, and I think the stories relates to feet although there are no feet in the master plan,
14 when you say three to four stories, you're definitely not talking 55 feet. In other words, I
15 can see an exception being made if for some reason there's a situation where you can't
16 build four stories without, well, where five stories is desirable, you could go up, but you
17 would really want to try to limit that. And then when you, I didn't see this so clearly until
18 the very last moment of the Hearing Examiner when I saw this particular plan, previous
19 ones had other things wrong.

20
21 Councilmember Floreen,
22 Sure.

23
24 Paul Majewski,
25 What stood out was the bar, the point of measurement, and then I looked at the
26 elevations. And it's just tremendous that there would be only one single point from which
27 to measure the height.

28
29 Councilmember Floreen,
30 Well, yeah.

31
32 Paul Majewski,
33 That's the highest point, and then 400 feet. You know, it's ridiculous. And of course,
34 they will have to have a lower height than 81 feet over there you would think with the
35 geniuses that they have working for them. You know, you could have a normal height,
36 normal stories on the upper end. And then as you go down, you could have, you know,
37 high ceilings which are very popular. The stories are going to have high ceilings. You
38 could, you know, you really could fill up that 81 feet. They could put a fancy roof there.
39 From what I've seen also around town, you've got these dormer things. In other words,
40 five stories starts to look like six or seven stories when you start playing games allowing
41 dormers to not be stories but.

42
43 Councilmember Floreen,
44 Okay.



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1
2 Paul Majewski,
3 People are living there.
4
5 Councilmember Floreen,
6 Yeah. So, your issue is Aurora Hills Drive up at the tippety top there?
7
8 Paul Majewski,
9 Yes.
10
11 Councilmember Floreen,
12 That's where it's four stories, right? As I'm told. And there is a binding element, as I
13 understand that limits it to 55 feet.
14
15 Paul Majewski,
16 And I'm not happy with that and.
17
18 Councilmember Floreen,
19 You don't like that, but at least it's four stories.
20
21 Paul Majewski,
22 Yes.
23
24 Councilmember Floreen,
25 So, that's like, you'd have to say, well, okay, that's within the master plan still.
26
27 Paul Majewski,
28 Okay.
29
30 Councilmember Floreen,
31 But is your issue then the bottom part of it where, the back?
32
33 Paul Majewski,
34 Yes. That's.
35
36 Councilmember Floreen,
37 And how it's affected by the slope.
38
39 Paul Majewski,
40 Yes.
41
42 Councilmember Floreen,
43 So, it's kind of where you measure?
44



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1 Paul Majewski,
2 Yes.

3
4 Councilmember Floreen,
5 Is that, I'm just trying to understand that, make sure I'm hearing you clearly.

6
7 Paul Majewski,
8 That, and as I said, the justification for the 55 feet was as Mr., Councilmember Elrich
9 was asking. [laughter].

10
11 Councilmember Floreen,
12 He's given up.

13
14 Paul Majewski,
15 If you make an exception here, does that mean you've got to make it everywhere,
16 especially when it's so large? I didn't measure it.

17
18 Councilmember Floreen,
19 Sure.

20
21 Paul Majewski,
22 To be 400 feet until after the hearing was over.

23
24 Councilmember Floreen,
25 Sure, but that, but your basic master plan issue is the height really at the lower end; is
26 that correct? In terms of the stories. I mean, I'm just trying to understand if it's four
27 stories at the.

28
29 Francoise Carrier,
30 Councilmember Floreen, I'd like to make one little correction. There is no guarantee that
31 it's four stories at Aurora Hills Drive. It has to be no higher than 55 feet.

32
33 Councilmember Floreen,
34 Okay.

35
36 Francoise Carrier,
37 The binding, textual binding element says four to five stories, no higher than 55 feet and
38 the point of measurement for the 55 feet is Aurora Hills Drive.

39
40 Councilmember Floreen,
41 Okay.

42
43 Francoise Carrier,



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1 The topography suggests that it will end up being four feet towards the retail and five
2 feet towards Little Seneca.

3
4 Councilmember Floreen,
5 Stories, you mean.

6
7 Francoise Carrier,
8 It does not tell us, stories, excuse me.

9
10 Councilmember Floreen,
11 Yeah.

12
13 Francoise Carrier,
14 Thank you.

15
16 Councilmember Floreen,
17 Sure.

18
19 Francoise Carrier,
20 It does not tell us how many stories would be facing Aurora Hills Drive for instance.

21
22 Councilmember Floreen,
23 Okay. Okay, fine.

24
25 Francoise Carrier,
26 It just tells us 55 feet.

27
28 Councilmember Floreen,
29 The binding element identifies the limit.

30
31 Francoise Carrier,
32 Just the height limit and it does not specify where the four and five fall.

33
34 Bob Harris,
35 That's correct although the record does say that it's going to be four to that side and five
36 out at the back. As the Zoning Hearing Examiner has indicated, we need to go back to
37 site plan approval at the Planning Board. I have no doubt that they will hold us to that
38 standard as well irrespective of it, in the binding elements or not.

39
40 Councilmember Floreen,
41 So, it goes back to site plan for further application of all these elements with respect to
42 the height and then number of stories issue. Again, to be clear, it's the master plan that
43 doesn't use feet.



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1 Francoise Carrier,
2 Right.

3
4 Councilmember Floreen,
5 It uses the stories. But the binding elements here use the feet?

6
7 Francoise Carrier,
8 They use both. They limit the stories to four to five and they limit the height to 55. They
9 just don't specify.

10
11 Councilmember Floreen,
12 Where is what?

13
14 Francoise Carrier,
15 Where we have four stories and where we have five.

16
17 Councilmember Floreen,
18 Okay. And is that your main master plan issue Mr. Majewski?

19
20 Paul Majewski,
21 The intensity of, the Newcut, the vision for that neighborhood I think is being violated
22 with this much density on that small area of property.

23
24 Councilmember Floreen,
25 And is there part of the master plan language that is the basis for your position there?

26
27 Paul Majewski,
28 I'm not sure that it's on the record but I think that was in what I read, well, I don't see it
29 at this moment, but.

30
31 Councilmember Floreen,
32 That's your concern? Whether or not it's a master plan issue.

33
34 Paul Majewski,
35 Density of that amount should be next to a transit center. If it's elderly who are not able
36 to get around, being right at a retail center makes a lot of sense. As far as the master
37 plan, the transit oriented town, something of, I mean, right at the transit center, PD-11,
38 is the rule there. I mean, and this is, you know, 33 units per acre on three acres. That's
39 just a tremendous density. I don't see that the master plan had called for that.

40
41 Councilmember Floreen,
42 Okay. Okay. Thank you. That helps me understand what your views are. Thank you.

43
44 Council President Knapp,



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1 Okay. I see no further discussion. Is there a motion? Mr. Leventhal.

2
3 Councilmember Leventhal,
4 Mr. President, I appreciate the oral argument that we've heard today. I know that the
5 concerns of the two participants here are sincere and they've taken time out of their day
6 and it's not easy to go up against some of the well-trained attorneys that we have here
7 in the County. But having listened carefully to the arguments on both sides, I move
8 approval of the Hearing Examiner's report.

9
10 Council President Knapp,
11 Is there a second?

12
13 Councilmember Ervin,
14 Second.

15
16 Council President Knapp,
17 Seconded by Councilmember Ervin. Okay. I don't think we have further discussion. All
18 in support of the motion on the Hearing Examiner's Report and Recommendation,
19 indicate by raising your hand.

20
21 Francoise Carrier,
22 I think you might need a vote.

23
24 Council President Knapp,
25 Oh. Roll call vote, sorry, you're right, sorry missed that. Roll call right there. Even
26 simpler. Madam Clerk, if you'd call the roll.

27
28 Council Clerk,
29 Mr. Elrich.

30
31 Councilmember Elrich,
32 No.

33
34 Council Clerk,
35 Mr. Praisner.

36
37 Councilmember Praisner,
38 Yes.

39
40 Council Clerk,
41 Ms. Trachtenberg.

42
43 Councilmember Trachtenberg,
44 Yes.



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1
2 Council Clerk,
3 Ms. Floreen.

4
5 Councilmember Floreen,
6 Yes.

7
8 Council Clerk,
9 Mr. Leventhal.

10
11 Councilmember Leventhal,
12 Yes.

13
14 Council Clerk,
15 Ms. Ervin.

16
17 Councilmember Ervin,
18 Yes.

19
20 Council Clerk,
21 Mr. Berliner.

22
23 Councilmember Berliner,
24 Yes.

25
26 Council Clerk,
27 Mr. Andrews.

28
29 Councilmember Andrews,
30 Yes.

31
32 Council Clerk,
33 Mr. Knapp.

34
35 Council President Knapp,
36 Yes. The Hearing Examiner's Report is agreed to eight to one. And we are, we go to
37 adjournment. We are in adjournment. The Council is not meeting next week. There are
38 a couple of Committee meetings remaining this week but I would urge everyone to have
39 a safe and festive Fourth of July holiday, and partake of those Montgomery County
40 fireworks that we just approved. Thank you all very much.

41
42 Bob Harris,
43 Thank you Mr. President. Thank you.
44